DEPARTMENT OF THE TREASURY

31 CFR Part 148

RIN 1505–AC46

Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Secretary of the Treasury (the ''Secretary''), as Chairperson of the Financial Stability Oversight Council (the ''Council''), is adopting final rules (the ''Final Rules'') in consultation with the Federal Deposit Insurance Corporation (the ''FDIC'') to implement the qualified financial contract (''QFC'') recordkeeping requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'' or the ''Act''). The Final Rules require recordkeeping with respect to positions, counterparties, legal documentation, and collateral. This information is necessary and appropriate to assist the FDIC as receiver to: Fulfill its obligations under the Dodd-Frank Act in deciding whether to transfer QFCs; assess the consequences of decisions to transfer, disaffirm or repudiate, or allow the termination of, QFCs with one or more counterparties; determine if any risks to financial stability are posed by the transfer, disaffirmance or repudiation, or termination of such QFCs; and otherwise exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act.

DATES: The Final Rules are effective December 30, 2016.

FOR FURTHER INFORMATION CONTACT: Monique Y.S. Rollins, Deputy Assistant Secretary for Capital Markets, (202) 622–1745; Jacob Liebschutz, Director, Office of Capital Markets, (202) 622–8954; Peter Nickoloff, Financial Economist, Office of Capital Markets, (202) 622–1692; Steven D. Laughton, Assistant General Counsel (Banking & Finance), (202) 622–8413; or Stephen T. Milligan, Attorney-Advisor, (202) 622–4051.

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I. Introduction

Title II of the Dodd-Frank Act (''Title II'') [1] generally establishes a mechanism for the orderly resolution of a financial company whose failure and resolution under otherwise applicable federal or state law would have serious adverse effects on financial stability in the United States.

Section 210(c)(8)(H) of the Act requires the Federal primary financial regulatory agencies, as defined in the Act [2] (the ''PFRAs''), to jointly prescribe, by July 21, 2012, final or interim final regulations that require financial companies to maintain such records with respect to QFCs that the PFRAs determine to be necessary or appropriate to assist the FDIC as receiver for a covered financial company in being able to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10).[3] Section 210(c)(8)(H) also requires the regulations to, as appropriate, differentiate among financial companies by taking into consideration their size, risk, complexity, leverage, frequency and dollar amount of QFCs, interconnectedness to the financial system, and any other factors deemed appropriate.

Section 210(c)(8)(H) provides that if the PFRAs do not so prescribe such joint regulations by July 21, 2012, the Secretary, as Chairperson of the Council, shall prescribe such regulations in consultation with the FDIC. As the PFRAs did not prescribe such regulations by the statutory deadline, on January 7, 2015, the Secretary, as Chairperson of the Council, in consultation with the FDIC, requested public comment on proposed rules that would implement section 210(c)(8)(H) (the ''Proposed Rules'').[4] The Secretary received comments on the Proposed Rules from trade associations, asset managers, insurance companies, clearing organizations, a nonprofit organization, and a private individual. In general, commenters acknowledged the need for the FDIC to have access to appropriate QFC records in order to exercise its role as a receiver under Title II of the Dodd-Frank Act but also requested relief from aspects of the Proposed Rules that they argued were unduly burdensome.[5] As discussed below, the Secretary has, in consultation with the FDIC, made substantial changes in the Final Rules in response to the comments received. In making these changes, the Secretary has sought to reduce the burden of the rules while still assuring that the FDIC will have the records it needs to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), and (10).

The substantial constraints imposed by Title II on the FDIC's exercise of its rights with respect to QFCs necessitate the detailed, standardized recordkeeping requirements adopted in the Final Rules. As discussed in greater detail in the Supplementary Information to the Proposed Rules,[6] Title II provides the FDIC as receiver of a covered financial company with the authority to (i) transfer the QFCs of the covered financial company to another financial institution, including a bridge financial company established by the FDIC or (ii) retain the QFCs within the receivership, disaffirm or repudiate the QFCs, and pay compensatory damages.[7] The FDIC may also retain the QFCs within the receivership and allow the counterparties to terminate the QFCs. In deciding whether to transfer, disaffirm or repudiate, or allow counterparties to terminate the QFCs of the covered financial company, the FDIC must take

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 12 U.S.C. 5301(12). See the term ''primary financial regulatory agency.''

[3] 12 U.S.C. 5390(c)(8)(H).

[4] 80 FR 966 (Jan. 7, 2015).

[5] *See, e.g.,* comment letters from The Clearing House Association L.L.C., the Securities Industry and Financial Markets Association, the American Bankers Association, the Financial Services Roundtable, and the Int'l Swaps and Derivatives Association, Inc. (April 7, 2015) (the ''TCH et al. letter''), p. 2; The Depository Trust & Clearing Corporation (April 7, 2015) (''DTCC letter''), pp. 1–2; Sutherland Asbill & Brennan LLP on behalf of The Commercial Energy Working Group (April 7, 2015) (''CEWG letter), p. 2; the Asset Management Group of the Securities Industry and Financial Markets Association (April 7, 2015) (''SIFMA AMG letter''), p. 1.

[6] A more general summary of the treatment of QFCs under Title II and the rights and obligations of the FDIC under the Act was provided in section II of the Supplementary Information to the Proposed Rules. *See* 80 FR 966, 968–70.

[7] 12 U.S.C. 5390(c)(11).

into consideration the requirements of Title II, including those discussed below.

As referenced throughout this Supplementary Information to the Final Rules, Title II requires that the FDIC as receiver treat the QFCs of a covered financial company with a particular counterparty and that counterparty's affiliates consistently. Within certain constraints, the FDIC may take different approaches with respect to QFCs with different counterparties. However, if the FDIC as receiver desires to transfer any QFC with a particular counterparty, it must transfer all QFCs between the covered financial company and such counterparty and any affiliate of such counterparty to a single financial institution. Similarly, if the FDIC desires to disaffirm or repudiate any QFC with a particular counterparty, it must disaffirm or repudiate all QFCs between the covered financial company and such counterparty and any affiliate of such counterparty.[8]

Furthermore, the FDIC is required to confirm that the aggregate amount of liabilities, including QFCs, of the covered financial company that are transferred to, or assumed by, the bridge financial company from the covered financial company do not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial company.[9] In addition, in order to repudiate any QFCs of the covered financial company, the receiver must first determine that the performance of such QFCs would be burdensome and that such repudiation will promote the orderly administration of the affairs of the covered financial company.[10] More generally, Title II provides that with respect to the disposition of assets of a covered financial company, including a repudiation or transfer of QFCs, the FDIC shall, to the greatest extent practicable, do so in a way that maximizes value and minimizes losses and mitigates the potential for serious adverse effects to the financial system.[11] Finally, the FDIC must make its decision as to how to treat the QFCs of the covered financial company within a very limited time frame because the stay that prevents termination based on the appointment of the receiver lasts only for the period between the appointment of the FDIC as receiver and 5 p.m. (eastern time) on the business day following the date of the appointment.[12]

The Secretary has determined that, given these statutory constraints, it is necessary and appropriate for the FDIC as receiver to have access to detailed, standardized records from the financial companies that potentially would be the most likely to be considered for orderly liquidation under Title II. Nonetheless, having considered the comments received, the Secretary has determined that it is possible to reduce the scope of financial companies subject to the rules and the extent of recordkeeping required while still requiring the records the FDIC would need as receiver in order to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10). In particular, the Secretary has made changes in the Final Rules that provide for further differentiation among financial companies by:

- Adding to the definition of ''records entity'' new thresholds based on the level of a financial company's derivatives activity;
- providing an exclusion for insurance companies;
- providing a conditional exemption for clearing organizations; and
- providing a de minimis exemption from the recordkeeping requirements, other than the requirement to maintain copies of the documents that govern QFC transactions, for entities that are party to 50 or fewer open QFC positions.

The Final Rules also significantly reduce the burden of the required recordkeeping by, among other things:

- Revising the definition of ''records entity'' to identify which members of a corporate group are records entities by reference to whether they are consolidated under accounting standards;
- replacing the requirement to maintain organizational charts of counterparties with a requirement to identify only certain information as to each counterparty, such as the ultimate and immediate parent entities of the counterparty;
- eliminating the requirement to maintain risk metrics information;
- eliminating the requirement to maintain copies of additional information with respect to QFCs provided by the records entity to other regulators, swap data repositories, and security-based swap data repositories;
- eliminating the requirement that copies of QFC agreements be searchable;
- eliminating several fields from the required data tables; and
- providing for tiered initial compliance dates based on the size of the corporate group, with all records entities having additional time to comply with the rules.

The Final Rules also provide for additional fields in the required data tables that are not anticipated to impose a significant additional burden on records entities, and the proposed requirement that records of affiliated records entities be maintained in a form that allows for aggregation has been replaced in the Final Rules with the requirement that the top-tier parent financial company be capable of aggregating such records.

II. Description of the Final Rules

The following discussion provides a summary of the Proposed Rules, the comments received, and the Secretary's responses to those comments, including modifications made in the Final Rules. In addition to the considerations discussed in this section, the Secretary, in adopting these Final Rules, has taken into account the potential costs and benefits of the rules discussed in Section III below.

A. Scope, Purpose, Effective Date, and Compliance Dates

Section 148.1(a) of the Final Rules defines the scope of the rules. Section 148.1(b) explains the purpose of the rules. Sections 148.1(c) and (d) set forth the rules' effective and compliance dates.

1. Scope

a. Key Definitions

The scope of the Final Rules is established by certain key definitions that determine the entities that would be subject to the rules. Specifically, section 148.1(a) of the Final Rules provides that the rules apply to any ''financial company'' that is a ''records entity'' and, with respect to section 148.3(a), to the ''top-tier financial company'' of a ''corporate group,'' as those terms are defined in the Final Rules.

Financial Company: The Final Rules, as did the Proposed Rules, incorporate the definition of ''financial company'' set forth in section 201(a)(11) of the Dodd-Frank Act.[13] Entities that are not included in the section 201(a)(11) definition of ''financial company'' are not included in the definition of ''records entity'' and, therefore, are not subject to the rules. Entities that are included in the section 201(a)(11) definition of ''financial company'' are subject to the rules if they also meet the

[8] For transfer, *see* 12 U.S.C. 5390(c)(9)(A); for disaffirmance or repudiation, *see* 12 U.S.C. 5390(c)(11).

[9] *See* 12 U.S.C. 5390(h)(5)(F).

[10] *See* 12 U.S.C. 5390(c)(1).

[11] *See* 12 U.S.C. 5390(a)(9)(E). *See also* 12 U.S.C. 5390(a)(1)(B)(iv).

[12] *See* 12 U.S.C. 5390(c)(10)(B)(i).

[13] 12 U.S.C. 5381(a)(11)

other criteria in the definition of ''records entity.'' In addition, the definition of ''covered financial company'' in section 201(a)(8) of the Dodd-Frank Act excludes insured depository institutions,[14] which as a result are ineligible for a Title II orderly liquidation. Thus, based on the section 201(a)(11) definition of ''financial company'' and the section 201(a)(8) definition of ''covered financial company,'' the following entities are not required to maintain records under the Final Rules:

- Financial companies that are not incorporated or organized under U.S. federal or state law;
- Farm Credit System institutions;
- Governmental entities, and regulated entities under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992;[15] and
- Insured depository institutions.

Records Entity: Each records entity is required to maintain records with respect to all of its QFCs unless such records entity receives an exemption under the rules. The Proposed Rules would have defined ''records entity'' as a financial company that: Is not an exempt entity; is a party to an open QFC, or guarantees, supports, or is linked to an open QFC; and meets one of the following requirements: (a) Is determined pursuant to section 113 of the Dodd-Frank Act[16] to be an entity that could pose a threat to the financial stability of the United States; (b) is designated pursuant to section 804 of the Dodd-Frank Act[17] as a financial market utility that is, or is likely to become, systemically important; (c) has total assets equal to or greater than $50 billion; or (d) is a party to an open QFC or guarantees, supports, or is linked to an open QFC of an affiliate and is a member of a corporate group within which at least one affiliate meets one of the criteria in (a), (b), or (c).

As described below, the Secretary has modified the definition of ''records entity'' in order to further differentiate financial companies by reference to certain factors listed in section 210(c)(8)(H)(iv) and to reduce the costs of complying with the rules. This has the effect of substantially narrowing the scope of entities subject to the recordkeeping requirements of the Final Rules, as discussed more fully below, and thereby reducing the costs imposed by the rules. Furthermore, as discussed below, the Secretary has eliminated the phrase ''guarantees, supports, or is linked to an open QFC'' from the definition of ''records entity'' in the Final Rules.

Designated nonbank financial companies and financial market utilities. The Secretary continues to believe that nonbank financial companies subject to a determination by the Council under section 113 of the Act and financial market utilities designated by the Council under section 804 of the Act as, or as likely to become, systemically important should be included as records entities. As was noted in the Supplementary Information to the Proposed Rules, certain of the factors relevant to a designation under both section 113 and section 804 are similar to the factors listed in section 210(c)(8)(H)(iv). The Council may make a determination under section 113 if it determines that material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to the financial stability of the United States.[18] Similarly, in making a determination that a financial market utility is or is likely to become systemically important, the Council is required to consider the effect that the failure of or a disruption to the financial market utility would have on critical markets, financial institutions, or the broader financial system.[19] In light of the factors the Council must consider in making a determination regarding a nonbank financial company under section 113 or a designation of a financial market utility under section 804, the Secretary has concluded that these are the types of financial companies that potentially would be the most likely to be considered for orderly liquidation under Title II[20] and that it is therefore appropriate that they be deemed to be records entities. Therefore, the Secretary has retained the inclusion of such nonbank financial companies and financial market utilities in the definition of ''records entity'' in the Final Rules. However, the Secretary has provided a conditional exemption applicable to certain financial market utilities as described below.

Financial Companies with $50 Billion in Assets; Additional Factors. The Proposed Rules would have included as a records entity any financial company that is not an exempt entity; is a party to an open QFC, or guarantees, supports, or is linked to an open QFC; and has total assets equal to or greater than $50 billion. The Secretary proposed the $50 billion threshold as a useful means of identifying entities that are of a sufficient size that they could potentially be considered for orderly liquidation under Title II. In proposing the $50 billion asset threshold, the Secretary took into consideration the fact that it corresponds to the threshold that was established for determining which bank holding companies would be subject to enhanced supervision and prudential standards under Title I of the Dodd-Frank Act[21] and was also adopted by the Council as an initial threshold for identifying nonbank financial companies that merit further evaluation as to whether they should be designated under section 113 of the Act.[22]

The proposed $50 billion asset threshold received substantial attention from commenters. Several commenters stated that reliance on this threshold would lead to an overbroad application of the recordkeeping requirements and argued for a more tailored approach that would focus on those institutions that are more likely to be resolved under Title II.[23] One commenter proposed $250 billion as a more appropriate level for an asset threshold.[24] Several commenters recommended that the

[14] 12 U.S.C. 5381(a)(8)(B).

[15] 12 U.S.C. 4502(20).

[16] 12 U.S.C. 5323.

[17] 12 U.S.C. 5463.

[18] A determination under section 113 subjects the nonbank financial company to supervision by the Board of Governors of the Federal Reserve System and to enhanced prudential standards established in accordance with Title I of the Act. *See* 12 U.S.C. 5365.

[19] *See* 12 U.S.C. 5463(a)(2)(D).

[20] In making a determination under section 113, the Council may take into consideration each of the factors expressly referenced in section 210(c)(8)(H)(iv), including as follows: Leverage of a company may be considered under sections 113(a)(2)(A) or 113(b)(2)(A); complexity may be considered under sections 113(a)(2)(B) or 113(b)(2)(B); interconnectedness to the financial system may be considered under sections 113(a)(2)(C), (G), and (I) or 113(b)(2)(C), (G), and (I); size may be considered under sections 113(a)(2)(B), (D), (E), (G), (I), and (J) or 113(b)(2) (B), (D), (E), (G), (I) and (J); frequency and dollar amount of QFCs may be considered under sections 113(a)(2)(I) and (J) or 113(b)(2)(I) and (J); and risk may be considered throughout sections 113(a)(2) and 113(b)(2). *See also* 12 CFR 1310.11 (setting forth the Council's considerations in making proposed and final determinations, which correspond to the considerations provided in section 113) and 77 FR 21637 (April 11, 2012) (adopting 12 CFR part 1310 and related interpretive guidance). In making a determination under section 804, the Council takes into consideration various factors under section 804(a)(2) and 12 CFR 1320.10 that correspond to the factors referenced in section 210(c)(8)(H)(iv). *See also* 76 FR 44763 (July 27, 2011) (adopting 12 CFR part 1320).

[21] *See* 12 U.S.C. 5365(a).

[22] *See* Financial Stability Oversight Council Guidance for Nonbank Financial Company Determinations, 12 CFR part 1310, app. A., III.a.

[23] *See, e.g.,* TCH et al. letter, p. 7; IIB letter, pp. 5–6; ICI letter, pp. 7–9; SIFMA AMG letter, pp. 3–5. The specific concerns raised with respect to the application of the $50 billion asset threshold to investment companies and investment advisers are discussed below.

[24] *See* IIB letter, p. 7.

Secretary adopt a multi-factor approach, citing the use of multi-factor approaches in other contexts, including the Council's nonbank financial holding company determinations process and the methodology used by the Board of Governors of the Federal Reserve System (''Federal Reserve'') for identifying U.S. global systemically important bank holding companies (''G–SIBs'').[25] One commenter stated that the scope of entities subject to the Proposed Rules was too narrow.[26]

The Secretary is making two changes to the definition of ''records entity'' in the Final Rules that will, by incorporating additional factors, substantially reduce the number of entities that will be subject to recordkeeping requirements. These measures relate to several of the factors specifically enumerated in section 210(c)(8)(H) of the Act and allow the Secretary to better limit the financial companies included within the scope of records entities to those companies that potentially would be the most likely to be considered for orderly liquidation under Title II.

First, the Final Rules specifically include in the definition of ''records entity'' those entities that are identified as G–SIBs.[27] Since the Proposed Rules were issued, the Federal Reserve has adopted rules specifying the criteria by which U.S. bank holding companies are identified as G–SIBs.[28] G–SIBs are required to hold additional capital to increase their resiliency in light of the greater threat they pose to the financial stability of the United States.[29] An entity is identified as a G–SIB pursuant to the Federal Reserve's rules based on its level of twelve systemic indicators as compared to the aggregate indicator amounts across other large, global banking organizations. These twelve systemic indicators correspond to five categories—size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity—that correlate with systemic importance and overlap with the factors specifically enumerated in section 210(c)(8)(H) of the Act, listed above.[30] Because the G–SIBs have been deemed to be the top-tier U.S. bank holding companies with the greatest systemic importance, the Secretary has determined that it is appropriate that they be included within the definition of ''records entity'' under the Final Rules. By incorporating the Federal Reserve's multi-factor framework into the definition of ''records entity,'' the Secretary has responded to comments to reflect the use of additional factors in the definition of ''records entity.''

However, the Secretary believes that to include only the G–SIBs identified by the Federal Reserve, along with designated financial market utilities and nonbank financial companies subject to a Council determination, within the definition of ''records entity'' would unduly limit the entities that would be subject to the recordkeeping rules. The G–SIBs identified under the Federal Reserve's rules by definition only include U.S. top-tier bank holding companies, whereas other types of financial companies potentially would also be among the most likely financial companies to be considered for orderly liquidation under Title II. Therefore, in addition to adding the G–SIBs to the definition of ''records entity,'' the Secretary has chosen to maintain the $50 billion threshold but supplement it with an additional factor tied to a financial company's level of derivatives activity. Specifically, section 148.2(n)(iii)(D) of the Final Rules provides that in addition to having total consolidated assets equal to or greater than $50 billion, an entity must on a consolidated basis have either (i) total gross notional derivatives outstanding equal to or greater than $250 billion or (ii) derivative liabilities equal to or greater than $3.5 billion in order to be deemed a records entity under that prong of the definition. As explained below, this approach incorporates the most relevant factors into the definition of ''records entity'' by reference to metrics that are already generally calculated by financial companies.

Gross notional derivatives outstanding relates directly to three of the factors enumerated in section 210(c)(8)(H)(iv)—complexity, interconnectedness, and the dollar amount of QFCs. Gross notional derivatives outstanding is used in the Federal Reserve's methodology for identifying G–SIBs as an indicator of complexity.[31] Gross derivatives exposure is also one metric the Council has taken into consideration when assessing the interconnectedness of a nonbank financial company under review for a potential determination under section 113.[32] In addition, because derivatives reflected in the total gross notional derivatives outstanding metric are all QFCs as defined in Title II, this metric relates directly to the importance of an institution's maintaining QFC records. Derivatives are among the most complex QFCs, and thus the inclusion in the definition of ''records entity'' of measures of derivatives activity relates directly to the objective of the rules, which is to allow the FDIC to make informed judgments about complex portfolios of QFCs in a timely manner.

Unlike some other potential measures of complexity and interconnectedness and unlike the measures of the volume of QFCs generally, gross notional derivatives outstanding is a measure that the Secretary understands is generally already calculated, and in most cases reported or disclosed, by financial companies with assets of $50 billion or more. Bank holding companies with assets of $50 billion or more are required to report to the Federal Reserve the amount of gross notional derivatives outstanding quarterly on Schedule H–CL of Form Y–9C and annually on Schedule D of Form Y–15. Financial companies often satisfy the requirement to disclose in their financial statements the volume of their derivatives activity by disclosing the amount of gross notional derivatives outstanding;[33] disclosure of gross notional derivatives outstanding is also frequently provided by large financial companies filing annual and quarterly reports under sections 13 and 15(d) of the Securities Exchange Act of 1934 (''Exchange Act'') to satisfy the requirement of the Securities and Exchange Commission (''SEC'') to provide quantitative disclosures about the market risk of their derivatives portfolio.[34] In addition, registered investment companies typically disclose notional amounts with respect to certain derivatives. The Final Rules define ''total gross notional derivatives outstanding'' as the gross notional value of all derivative instruments that are outstanding as of the end of the most recent fiscal year as recognized and measured in accordance with U.S. generally accepted accounting

[25] *See* IIB letter, pp. 3, 11; TCH et al. letter, p. 11; letter from Capital One Financial Corporation, Fifth Third Bancorp, The PNC Financial Services Group, Inc., Regional Financial Corporation and SunTrust Banks, Inc. (April 7, 2015) (the ''Regional Banks letter'').

[26] *See* Letter from Better Markets, Inc. (April 7, 2015) (''Better Markets letter''), p. 6–10.

[27] § 148.2(n)(1)(iii)(C).

[28] *See* 12 CFR part 217, subpart H.

[29] *See* 12 CFR part 217, subpart H; Federal Reserve, Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies, 80 FR 49082, 83 (Aug. 14, 2015).

[30] *See* 12 CFR 217.404. *See also* 80 FR at 49095–97.

[31] *Id.*

[32] *See* 12 CFR part 1310, appx. A.II.d.2.

[33] *See* FASB Accounting Standards Codification Topic 815, Derivatives and Hedging ¶ 10–50–1A.

[34] *See* Item 305 of Regulation S–K, 17 CFR 229.305.

principles (''GAAP'') or other applicable accounting standards.

Referring to gross notional derivatives outstanding alone, however, would not be sufficient to identify financial companies with large exposures to derivatives. The Final Rules include the amount of a financial company's derivative liabilities as an alternative measure by which a financial company may be deemed a records entity. The Final Rules define ''derivative liabilities'' as the fair value of derivative instruments in a negative position that are outstanding as of the end of the most recent fiscal year as recognized and measured in accordance with GAAP or other applicable accounting standards, taking into account the effects of master netting agreements and cash collateral held with the same counterparty on a net basis to the extent reflected on the financial company's financial statements. This metric, like total gross notional derivatives outstanding, serves as a proxy for interconnectedness, as a company that has a greater level of derivative liabilities would have higher counterparty exposure throughout the financial system. For this reason, derivative liabilities is one of the metrics used by the Council for identifying nonbank financial companies that may merit further evaluation for a potential determination under section 113.[35] Bank holding companies with assets of $50 billion or more are required to report quarterly to the Federal Reserve the net negative fair value of their derivatives contracts classified as trading liabilities on Schedule HC–D of Form Y–9C. Moreover, large financial companies filing annual and quarterly reports under the Exchange Act generally disclose the amount of their derivative liabilities in the footnotes to their financial statements in accordance with GAAP.

The inclusion of both the total gross notional amount of derivatives outstanding and derivative liabilities thresholds in the definition of ''records entity'' will better capture entities that are using substantial amounts of derivatives. The amount of total gross notional derivatives outstanding is an amount that may not, by itself, be fully representative of the interconnection and complexity of an entity and its QFC activities. For example, the notional amount of interest rate derivatives tends to be significantly larger than the notional amount of credit derivatives representing comparable levels of fair value risk, yet both types of derivatives are indicative of the interconnection and complexity of an entity. In turn, reference to derivative liabilities alone could obscure entities' level of derivatives activity to the extent a financial company's financial statements take into account the effects of netting agreements and cash collateral held with the same counterparty on a net basis. Although such netting may reduce the risk to the entity from engaging in such derivatives, even a derivatives portfolio with a low negative fair value after accounting for the effects of master netting agreements and cash collateral held with the same counterparty is indicative of interconnection and complexity if it is sufficiently large on a gross notional basis.

By including reference to total assets, notional amount of derivatives, and derivative liabilities, the Secretary has incorporated, as explained above, consideration of size, complexity, interconnectedness to the financial system, and the dollar amount of QFCs into the definition of ''records entity.'' Size, complexity, and interconnectedness to the financial system are, in turn, all indicators of risk, particularly risk to financial stability.[36] The Secretary, in adopting the definition of ''records entity,'' also considered the other factors listed in section 210(c)(8)(H), *i.e.,* frequency of QFCs and leverage. To the extent that the inclusion of frequency of QFCs among these factors is intended to serve as a proxy for the extent to which QFCs are utilized by a financial company, the Secretary believes that the inclusion of the total gross notional amount of derivatives outstanding and derivative liabilities achieves the same purpose. In addition, the Secretary has considered the frequency of QFCs in providing in the Final Rules for the de minimis exemption pursuant to which a records entity of any size that is a party to 50 or fewer open QFC positions is not required to maintain the records required under the rules other than to maintain copies of the documents governing its QFC transactions. The Secretary has decided not to reference leverage in the definition of ''records entity,'' because the appropriate methodology for calculating leverage may vary depending on the type of financial company, which would make incorporation of a specific measure of leverage difficult, particularly given the wide variety of entities that fall within the definition of ''financial company.''

The Final Rules provide for thresholds of $250 billion of total gross notional derivatives outstanding and $3.5 billion of total derivative liabilities. As noted above, bank holding companies with $50 billion or more in total consolidated assets report both total gross notional derivatives outstanding and derivative liabilities in regulatory filings. As of December 31, 2015, all of the G–SIBs were above the thresholds for total gross notional amount of derivatives outstanding and derivative liabilities and in most cases were significantly above the thresholds.[37] Conversely, most other bank holding companies were well below both of these thresholds. In addition, calibrating the derivatives thresholds as provided for in the Final Rules includes within their scope large, complex, and interconnected U.S. subsidiaries of foreign bank organizations that have been identified as global systemically important banks in their home countries.

Another reason for setting the thresholds at these levels is to provide for some degree of stability in the set of financial companies that are deemed to be records entities. In looking back across the previous eight quarters, the bank holding companies with derivative liabilities currently at or above the $3.5 billion threshold were at or above the threshold in nearly every quarter, while those with total derivative liabilities currently below the threshold were below the threshold in each quarter. Similarly, for total gross notional derivatives outstanding, bank holding companies at or above the $250 billion threshold were at or above the threshold in nearly every quarter over the last eight quarters, while those with total gross notional derivatives outstanding currently below the threshold were below the threshold in nearly every quarter over the last eight quarters.

Similar trends are evidenced among other public financial companies reporting derivative liabilities and total gross notional derivatives outstanding

[35] *See* 12 CFR part 1310, appx. A.III.a.

[36] *See, e.g.,* 80 FR at 49095–49097.

[37] Although each of the eight bank holding companies that currently are identified as G–SIBs pursuant to 12 CFR part 217 would also qualify as records entities pursuant to § 148.2(n)(iii)(D) of the Final Rules because they each have total consolidated assets in excess of $50 billion and total gross notional derivatives outstanding equal to or greater than $250 billion or derivative liabilities equal to or greater than $3.5 billion, it is possible that in the future, an entity could be deemed a G–SIB without being a records entity under § 148.2(n)(iii)(D) of the Final Rules if it does not maintain a large portfolio of derivatives but does have comparatively high levels of the other systemic indicators set forth in the G–SIB rules. The Secretary has determined that the G–SIBs, having been identified as the bank holding companies with the greatest systemic importance, should be subject to the recordkeeping requirements of the Final Rules regardless of whether they meet the other thresholds provided for in the definition of ''records entity.''

in their financial statements filed with the SEC. Among the nonbank financial companies with greater than $50 billion in total consolidated assets that publicly disclose their derivative liabilities or total gross notional derivatives outstanding, as of December 31, 2015, several reported amounts significantly above one or both thresholds while the majority were well below both thresholds. In looking back across the previous eight quarters, those with total derivative liabilities currently at or above the $3.5 billion threshold were above the threshold in every quarter, while those with total derivative liabilities currently below the threshold were below the threshold in nearly every quarter. Similarly, for total gross notional derivatives outstanding, those at or above the $250 billion threshold were above the threshold in nearly every quarter over the last eight quarters, while those below were below in every quarter over the last eight quarters.

Members of Corporate Groups. The Proposed Rules included within the definition of ''records entity'' those financial companies that (i) are members of a corporate group in which at least one financial company is a nonbank financial company subject to a Council determination or financial market utility designated by the Council, is a U.S. G–SIB, or meets the $50 billion asset threshold, (ii) are a party to or support a QFC, and (iii) are not excluded entities. The Proposed Rules defined ''corporate group'' of an entity to include all affiliates of that entity and ''affiliate'' to include any entity that controls, is controlled by, or is under common control with another entity.

Several commenters stated that the use of the definition of ''affiliate,'' discussed further below, had the effect of including too broad a scope of affiliates within the definition of ''records entity.'' [38] Several commenters argued that only the affiliates that reasonably might be subject to resolution under the orderly liquidation authority of Title II should be included as records entities.[39] Other commenters proposed that only those affiliates that meet threshold minimum asset, QFC activity, and complexity criteria should be considered records entities.[40] One commenter proposed including as records entities only entities that are identified as being significant to a critical operation or core business line, which, in the case of bank holding companies, would be the ''material entities'' identified in the resolution plans they are required to prepare.[41] Another commenter proposed that the definition of ''records entity'' only include entities that are consolidated for financial reporting purposes either on the Federal Reserve's Form FR Y–9C (regarding the financial condition of bank holding companies, savings and loan holding companies, and securities holding companies) or under any other generally applicable reporting rules or regulations applicable to the records entity.[42]

As discussed further below, the Secretary has adopted the suggestion of commenters, noted above, to revise the definition of ''records entity'' to identify which members of a corporate group are records entities by reference to whether they are consolidated under accounting standards. This change should have the effect of reducing the number of records entities. The Final Rules do not otherwise revise the scope of members of a corporate group that are included as records entities because the Secretary has decided that it is not possible to describe, *ex ante,* the precise characteristics of a financial company that could be placed into receivership under Title II. In particular, an entity could be resolved under Title II without the Secretary making the determination required under section 203(b) with respect to a covered financial company. Title II provides that the FDIC may appoint itself as receiver of an entity if it is a ''covered subsidiary'' of a covered financial company of which the FDIC has been appointed as receiver and it is jointly determined by the FDIC and the Secretary that (i) the covered subsidiary is in default or in danger of default, (ii) the FDIC's appointment as receiver would avoid or mitigate serious adverse effects on the financial stability or economic conditions of the United States, and (iii) the FDIC's appointment as receiver would facilitate the orderly liquidation of the covered financial company.[43] If the FDIC appoints itself receiver of a covered subsidiary, that subsidiary is treated as a covered financial company for purposes of Title II, and the FDIC as receiver would have the same rights under the Act and the same obligations under sections 210(c)(8), (9), or (10) of the Act as it does for other covered financial companies.[44]

Moreover, information about QFCs of each of the members of the corporate group could be of assistance to the FDIC as receiver in deciding whether to transfer the QFCs to a bridge financial company by giving the FDIC a full understanding of the impact of any transfer of the QFCs on the records entity's corporate group. For example, in the case of certain QFCs that the FDIC might otherwise determine to retain in the receivership rather than transfer to a bridge financial company (to which the equity in all of the records entity's subsidiaries have been transferred), if, by reference to a subsidiary's QFC records, the FDIC determines that the QFCs are offset by QFCs of the subsidiary with another counterparty, the FDIC as receiver may decide to transfer the records entity's QFCs to the bridge financial company in order to maintain a matched book at the corporate group level with the QFCs of the subsidiary.

The Secretary has, instead of excluding certain types or sizes of members of a corporate group from the definition of ''records entity,'' differentiated among financial companies by providing the de minimis exemption discussed below for records entities that are a party to 50 or fewer QFCs. As discussed below, the FDIC has advised the Secretary that it would be able to review the terms of that number of QFCs on a manual basis within the time frame provided by Title II. The de minimis exemption included in the Final Rules will, unlike commenters' proposed exclusions based on the materiality of the records entity, avoid a situation in which the FDIC as receiver will not have the records it may need for a particular records entity.

Requested additional limitations on definition of ''records entity.'' Referring to the FDIC's rules at 12 CFR part 371 (''Part 371''), which require recordkeeping by insured depository institutions that are ''in a troubled condition,'' commenters suggested that the recordkeeping requirements should apply only to financial companies ''in a troubled condition'' [45] or that meet an analogous threshold.[46] Unlike the

[38] *See* TCH et al. letter, pp. 8–10; ACLI letter, p. 11–13; ICI Letter, pp. 9–10; TIAA–CREF letter, pp. 5–6.

[39] *See* TCH et al. letter, p. 2–3, 8–10, and 13–15; ACLI letter, p. 12; CEWG letter, p. 2.

[40] *See* ACLI letter, p. 11; TIAA–CREF letter, p. 7.

[41] *See* TCH et al. letter, p. 15. *See also* Dodd-Frank Act § 165(d) (12 U.S.C. 5365); 12 CFR parts 243, 381.

[42] *See* Letter from The Clearing House Association L.L.C. and the Asset Management Group of the Securities Industry and Financial Markets Association (Nov. 13, 2015) (''TCH/SIFMA letter'').

[43] *See* 12 U.S.C. 5390(a)(1)(E)(i). ''Covered subsidiary'' is defined as any subsidiary of a covered financial company, other than an insured depository institution, an insurance company, or a covered broker or dealer. *See* 12 U.S.C. 5381(a)(9).

[44] *See* 12 U.S.C. 5390(a)(1)(E)(ii).

[45] *See* letter from The Capital Group Companies, Inc. (April 7, 2015) (the ''Capital Group letter''), p. 3, ICI letter, p. 9.

[46] *See* ACLI letter, p. 17.

Federal Deposit Insurance Act (the ''FDIA''), which restricts the authority of the FDIC to require QFC recordkeeping by insured depository institutions to those that are ''in a troubled condition,'' [47] Title II contains no such limitation, and the Secretary believes that adding such a limitation to the Final Rules would not be appropriate. There is no statutory or other established definition of ''in a troubled condition'' or of an analogous concept for a financial company as there is for an insured depository institution. Although one commenter proposed adoption of a condition based on the amount of risk-based capital at an insurance company,[48] such a condition would have to be appropriately calibrated for each type of financial company subject to the rules. More important, the amount of time that records entities are anticipated to need in order to come into compliance with the rules is such that to allow companies to wait until such a condition is met would not provide sufficient time to ensure that the relevant records would be available to the FDIC if needed. Several commenters requested two years to establish the recordkeeping systems required by the Proposed Rules,[49] and, as discussed below, the Secretary has provided for two or more years for all but the largest corporate groups to comply with the rules.

Excluded Entity: The Proposed Rules provided that the following entities would be exempt from the definition of ''records entity'' and, therefore, the scope of the rules:

(1) An insured depository institution as defined in 12 U.S.C. 1813(c)(2);

(2) A subsidiary of an insured depository institution that is not a functionally regulated subsidiary as defined in 12 U.S.C. 1844(c)(5), a security-based swap dealer as defined in 15 U.S.C. 78c(a)(71), or a major security-based swap participant as defined in 15 U.S.C. 78c(a)(67); or

(3) A financial company that is not a party to a QFC and controls only exempt entities as defined in clause (1) of this definition.

The Final Rules use the term ''excluded entity'' rather than ''exempt entity,'' as used in the Proposed Rules, in order to avoid confusion with the Secretary's authority to grant exemptive relief from the requirements of the Final Rules. Several commenters requested the addition of other types of entities to the list of excluded entities, as discussed below.

Insurance companies. Several commenters recommended that the Proposed Rules be revised to exclude insurance companies from the definition of ''records entity.'' These commenters pointed to section 203(e) of the Dodd-Frank Act, which requires that the liquidation or rehabilitation of an insurance company, as defined in Title II, would be conducted as provided under applicable state law, rather than under the orderly liquidation authority otherwise provided for under Title II.[50] Citing this provision, these commenters argued that subjecting insurance companies to the rules' recordkeeping requirements would not be sufficiently justified.[51]

Having considered these comments and the requirements of section 203(e) of the Act, the Secretary is excluding insurance companies from the definition of ''records entity'' in the Final Rules. Given that the liquidation or rehabilitation of an insurance company under Title II would be conducted under state law, to subject insurance companies to the requirements of the rules would not assist the FDIC as receiver in exercising its rights under the Act or fulfilling its obligations under sections 210(c)(8), (9), or (10). As discussed below, a definition of ''insurance company'' has been added in the Final Rules to ensure consistency with the application of section 203(e) of the Act.

Commenters also requested that certain non-insurance affiliates of insurance companies be excluded from the scope of the rules, specifically, that non-insurance affiliates within a holding company structure that is predominantly engaged in insurance activities be excluded from the rules.[52] Section 203(e) of the Act, however, excludes non-insurance company subsidiaries and affiliates from the requirement, referenced above, that the liquidation or rehabilitation of insurance companies be conducted under state law. Such non-insurance company subsidiaries and affiliates could themselves be determined to be a covered financial company or covered subsidiary. As these entities would be subject to the orderly liquidation authority of Title II, the records that would be required to be generated by these entities under the rules would assist the FDIC in being able to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act. The Secretary is therefore not excluding such insurance company affiliates from the definition of ''records entity'' under the Final Rules. However, the changes to the definition of ''records entity'' discussed above will reduce the number of corporate groups, including those predominantly engaged in insurance activities, that are subject to the rules, and the de minimis exemption discussed below will substantially eliminate recordkeeping requirements for those records entities with minimal QFC activity. A commenter proposed that QFCs that are entered into for the benefit of or on behalf of affiliated insurance companies be excluded from the rules.[53] However, it is unclear how such QFCs would be distinguished from other QFCs of non-insurance company affiliates, and the FDIC has advised that it would not necessarily treat such QFCs any differently than the way it would treat other QFCs of non-insurance company affiliates.

Investment companies and investment advisers. A number of commenters argued that investment companies and investment advisers should not be included as records entities subject to the rules' recordkeeping requirements.[54] Commenters outlined the manner in which investment advisers and funds are typically resolved outside the scope of Title II [55] and argued that it would be very unlikely for an investment adviser or the funds it manages either to be resolved under Title II or be important to the FDIC's consideration of a resolution under Title II of a financial company of which the adviser is an affiliate.[56] Commenters argued that regulatory constraints applied to registered investment companies, particularly leverage requirements and structural features, such as the ability to limit redemptions, mitigate the potential use of the orderly liquidation authority of Title II.[57] Additionally, they contended that because each investment adviser and investment company is highly substitutable, their assets under

[47] *See* section 11(e)(8)(H) of the FDIA (12 U.S.C. 1821(e)(8)(H)).

[48] *See* ACLI letter, p. 17.

[49] *See* AMG letter, p. 13; Regional Banks letter, p. 4.

[50] 12 U.S.C. 5383(e).

[51] *See* ACLI letter, pp. 4–6; letter from New York Life Insurance Company, The Northwestern Mutual Life Insurance Company, Massachusetts Mutual Life Insurance Company, and The Guardian Life Insurance Company of America (April 7, 2015) (the ''Mutual Insurance Companies letter''), pp. 3–4; TIAA–CREF letter, p. 4.

[52] *See* ACLI letter, p. 3; Mutual Insurance Companies letter, p. 5.

[53] *See* ACLI letter, p. 10.

[54] *See* SIFMA AMG letter, pp. 3–4; ICI letter, pp. 7–12

[55] *See* SIFMA AMG letter, p. 7; ICI letter, pp. 4–5.

[56] *See* SIFMA AMG letter, p. 4; ICI letter, pp. 3–4

[57] *See* TIAA–CREF letter, p. 5; ICI letter, p. 4.

management could be liquidated or transferred to other managers without threatening financial stability.[58]

The definition of ''records entity'' in the Final Rules would include only extremely large and interconnected asset management firms, and, for the reasons discussed above, investment advisers that are members of a corporate group that is subject to the rules. Although commenters cited examples of mergers and closures of funds and advisers that were conducted in an orderly fashion as demonstrating the unlikelihood of the need to resolve such entities under Title II, these examples did not address the potential effects of the rapid failure of a fund or of an asset management firm or other corporate group of the size and complexity that would be subject to the Final Rules.

The Secretary has made certain other changes in the Final Rules that will further reduce their impact on asset management firms. In response to the proposal of a commenter that noted that an investment adviser may be party to a QFC of one of its funds or clients for the limited purpose of providing a representation,[59] the Secretary confirms that an entity will not be considered to be a party to a QFC for purposes of the rules if it is only a party to such QFC for the limited purpose of providing a representation. In addition, the Secretary notes that individual investment funds, including mutual funds, would not be deemed to be affiliates of an investment adviser or other funds managed by that investment adviser solely by virtue of the investment adviser serving in such capacity with respect to the funds. Further, the Secretary confirms that, as stated in the Supplementary Information to the Proposed Rules,[60] each series of a series company (as defined in Rule 18f–2 under the Investment Company Act)[61] will be deemed to be a separate financial company, which means that an individual series would itself have to meet the asset and derivatives thresholds in order to be subject to the rules as a ''records entity'' and that such an individual series would be able to avail itself of the de minimis exemption if it alone was a party to 50 or fewer QFCs.

Clearing Organizations. The Proposed Rules' inclusion of designated financial market utilities within the definition of ''records entity'' would have subjected certain clearing organizations to the recordkeeping requirements of the rules. Three commenters recommended either excluding or exempting clearing organizations from the scope of the Final Rules.[62] Commenters stated that the requirements of the Proposed Rules were not appropriate for clearing organizations because they were designed to collect information relevant to bilateral trades and that such information is generally irrelevant to, and not collected by, clearing organizations.[63] Commenters stated that there is no need to require maintenance of copies of legal agreements as contemplated by the Proposed Rules, as a clearing organization's legal relationships with its clearing members are governed by its rulebook and not by individual contracts with its clearing members.[64] More generally, commenters stated that the recordkeeping requirements under the Proposed Rules were not tailored in a manner that would best facilitate resolution of a clearing organization.[65]

Commenters stated that the FDIC should coordinate with the clearing organizations' primary regulators (the Commodity Futures Trading Commission (''CFTC'') or SEC, as applicable) and utilize to the maximum extent practicable the existing reporting regulations, mechanisms, and formats already applicable to clearing organizations.[66] Commenters submitted that the records required to be provided under existing regulations should be sufficient to allow the FDIC as receiver to decide whether to transfer, disaffirm or repudiate, or allow the termination of a clearing organization's QFCs.[67] For example, one commenter indicated that a clearing organization can be expected to maintain trade records; aggregated trade data by clearing member; records of the amount of margin posted by or through clearing members; detail on the amount, type, and location of collateral; records of variation margin payments; and the terms of each QFC cleared by the derivatives clearing organization as provided in its rulebook.[68]

The Secretary acknowledges that all derivatives clearing organizations are required by the CFTC to maintain extensive records.[69] In addition, systemically important derivatives clearing organizations are required by CFTC rules to have procedures for providing the CFTC and FDIC with ''information needed for purposes of resolution planning.''[70] Likewise, clearing agencies registered with the SEC are required to maintain extensive records,[71] and systemically important or covered clearing agencies for which the SEC is the supervisory agency under the Dodd-Frank Act are required to adopt recovery and wind-down plans.[72]

In addition, as commenters noted, the unique nature of derivatives clearing organizations make it possible that their existing recordkeeping practices would be sufficient to meet the needs of the FDIC. The unique characteristics include the following: (i) A clearing organization's only counterparties are its clearing members; (ii) it enters into, or clears, a prescribed set of QFCs; (iii) it maintains a consolidated recordkeeping system to calculate aggregate exposures and margin requirements of its clearing members; and (iv) all transactions are governed by the rulebook of the clearing organization rather than individual legal agreements. The data requirements of the tables included in the Proposed Rules and the Final Rules were created with the expectation that the FDIC as receiver might need to make decisions as to whether to transfer, disaffirm or repudiate, or allow the termination of QFCs with a specific counterparty and its affiliates. In the case of a clearing organization, in contrast, a significant focus of the FDIC would be maintaining the clearing organization's matched book of QFCs. In these cases, the most relevant data would be the type of data that would be of value to a transferee in managing the transferred QFC portfolio, and this is the type of data that clearing organizations are required by their primary regulators to maintain and report.

Having considered the foregoing, the Secretary has determined, after consulting with the FDIC, that the FDIC would be able to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act if it has access to the records currently required to be maintained by clearing organizations. Accordingly, the Final Rules provide that a clearing

[58] *See* SIFMA AMG letter, p. 6.

[59] *Id.,* p. 10.

[60] *See* 80 FR 966, 975, n. 66.

[61] 17 CFR 270.18f–2.

[62] *See* DTCC letter, p. 11, letter from the Options Clearing Corporation (April 7, 2015) (''OCC letter''), pp. 6–8; letter from the Clearing Division of CME Mercantile Exchange Inc. (April 7, 2015) (''CME letter''), pp. 5–6.

[63] *See* Letter from the Futures Industry Association (April 10, 2015), p. 2; DTCC letter, p. 9; OCC letter, p. 8.

[64] *See* DTCC letter, p. 9; OCC letter pp. 11–12. *See also* CME letter, pp. 6–7.

[65] *See* DTCC letter, p. 7; CME letter, p. 6; OCC letter, pp. 8–13.

[66] *See* DTCC letter, p. 7; OCC letter, pp. 7–8; CME letter, p. 5.

[67] *See* OCC letter, p. 7.

[68] *See* CME letter, p. 7.

[69] *See* 17 CFR 39.14(e), 39.20.

[70] *See* 17 CFR 39.39(c)(2).

[71] *See* 17 CFR 240.17a–1.

[72] *See* 17 CFR 240.17Ad–22 (e)(3)(ii).

organization is exempt from complying with the recordkeeping requirements of the Final Rules other than the requirement to designate a point of contact if it is (i) in compliance with the recordkeeping requirements of the CFTC and the SEC, as applicable, including its maintenance of records pertaining to all QFCs cleared by the clearing organization and (ii) capable of and not restricted from, whether by law, regulation, or agreement, such as the clearing organization's rulebook, transmitting electronically directly to the FDIC the records maintained under such recordkeeping requirements within 24 hours of request of the SEC or CFTC, as applicable, as PFRA for the clearing organization. The Secretary has determined that this approach should eliminate the burden of duplicative and unnecessary data collection for such entities.

Guaranteed, Supported, or Linked: The Proposed Rules provided definitions for ''guaranteed or supported'' and ''linked.'' Under section 210(c)(16) of the Act, the FDIC as receiver has additional powers with respect to contracts of subsidiaries or affiliates of a covered financial company that are guaranteed or otherwise supported by or linked to such covered financial company.[73] Such contracts can be enforced by the FDIC as receiver of the covered financial company notwithstanding the insolvency, financial condition, or receivership of the covered financial company. The terms ''guarantees or supports'' and ''linked'' in the Proposed Rules were defined in the same way as they are defined in the FDIC's regulations implementing section 210(c)(16) of the Act. Under the Proposed Rules, a financial company would have had to be a party to or have guaranteed or supported or been linked to an open QFC in order to be deemed a records entity, and a records entity would have been required to have maintained records with respect to QFCs that it guaranteed or supported.

The Secretary has decided to simplify the rules by omitting references to ''guaranteed or supported'' and ''linked.'' Under the Final Rules, a financial company would, in addition to meeting the other criteria discussed above, have to be a party to an open QFC in order to be a ''records entity,'' and such a records entity would only be required to maintain records with respect to its QFCs. This change reduces the complexity of the rules but generally would not be expected to change significantly which entities would be records entities because guarantees and other credit enhancements of QFCs are themselves QFCs.[74] Further, given that the FDIC has adopted regulations clarifying that no special action will be required of the receiver to preserve enforceability of QFCs that are merely ''linked'' to the entity in receivership,[75] the Secretary has removed all references to ''linked'' from the Final Rules.

Affiliate, Subsidiary, and Control: The Proposed Rules defined the terms ''affiliate'' and ''subsidiary'' consistently with the definitions given to such terms in the Dodd-Frank Act. Sections 2(1)[76] and 2(18)[77] of the Dodd-Frank Act provide that these terms will have the same meanings as in section 3 of the FDIA. Under section 3(w)(4) of the FDIA, the term ''subsidiary'' is defined as ''any company which is owned or controlled directly or indirectly by another company.'' Similarly, the term ''affiliate'' is defined in section 3(w)(6) of the FDIA by reference to section 2(k) of the Bank Holding Company Act of 1956, as amended (''BHC Act'')[78] as ''any company that controls, is controlled by, or is under common control with another company.''

The FDIA, by reference to section 2 of the BHC Act, provides that any company has control over another company if the company directly or indirectly or acting through one or more persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the company; the company controls in any manner the election of a majority of the directors or trustees of the company; or the Federal Reserve determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the company. The first two prongs of the definition of ''control'' in the Proposed Rules are consistent with the BHC Act definition. The third prong of the definition of ''control'' in the Proposed Rules, that an entity controls another entity if it must consolidate another entity for financial or regulatory purposes, was proposed to reflect the fact that, in certain situations, a controlling interest may be achieved through arrangements that do not involve voting interests and to provide an objective test that does not require a determination by the Federal Reserve. In the Proposed Rules, the definitions of ''affiliate'' and ''control'' related both to (1) the determination of which members of a corporate group would be records entities and (2) the information that would be required to be maintained by records entities as to the identities of affiliates of counterparties.

One commenter stated that existing recordkeeping and operational controls with respect to QFCs are customarily maintained by parent companies or other entities that have majority ownership of or are otherwise required to consolidate the entities engaging in QFC activity for financial and regulatory purposes.[79] Commenters stated that, in contrast, the proposed definition of ''control'' would result in records entity status for legal entities, such as joint ventures and companies in which other members of the corporate group only have a minority interest, that might not be subject to actual governing control by the other members of the corporate group. These commenters indicated that this would pose difficulties for corporate groups attempting to coordinate the compliance of all of their member records entities.[80] This concern would apply in particular to the requirement that affiliated records entities use the same unique counterparty identifier for each counterparty and the proposed requirement that records of affiliated records entities be maintained in a form that allows for aggregation, which has been replaced in the Final Rules with the requirement that the top-tier parent financial company be capable of aggregating such records. As to the Proposed Rules' requirement to identify the affiliates of counterparties, one commenter argued that non-financial company counterparties' lack of familiarity with the BHC Act definition of ''control'' would make it difficult for records entities to maintain records as to the identity of such affiliates.[81]

The Secretary has determined that the FDIC as receiver in a Title II resolution would need to know the identities of the affiliates, as defined by reference to the BHC Act definition of ''control,'' of the records entity's counterparties. Specifically, as referenced above, section 210(c)(9)(A) of the Act provides the FDIC as receiver shall transfer to one transferee either all or none of the QFCs of a counterparty and the counterparty's ''affiliates,'' as defined by reference to the BHC Act definition of ''control.''[82] In addition, this provision requires that in making any such transfer, the FDIC

[73] *See* 12 U.S.C. 5390(c)(16).

[74] *See* 12 U.S.C. 5390(c)(8)(D).

[75] *See* 12 CFR 380.12

[76] 12 U.S.C. 5301(1).

[77] 12 U.S.C. 5301(18).

[78] 12 U.S.C. 1841(k).

[79] *See* ACLI letter, p. 14.

[80] *See* ACLI letter, pp. 13–14; TIAA–CREF letter, p. 6.

[81] *See* TCH et al. letter, p. 16.

[82] *See* 12 U.S.C. 5390(c)(9)(A).

as receiver must also transfer (i) all claims of the counterparty or any of its affiliates against the covered financial company under any such QFC, (ii) all claims of the covered financial company against the counterparty and any of its affiliates under any such QFC, and (iii) all property securing or any other credit enhancement for any such QFC. In order for the FDIC to comply with these requirements, the FDIC must have available to it the information as to affiliates, as defined in Title II, of counterparties that is specified in the tables in the appendix to the rules.

As discussed below, the Proposed Rules would have required a records entity to identify each affiliate of a counterparty by maintaining full organizational charts of the corporate group of a QFC counterparty. This has been replaced in the Final Rules with a requirement in the tables in the appendix to the rules to maintain records as to the identity of the immediate and ultimate parent entity of each counterparty, which will allow the FDIC to identify affiliated counterparties based on their common parent and ultimate parent entities. A new term, ''parent entity,'' has been defined for this purpose as an entity that controls another entity.

In addition, the Final Rules have been revised to conform the third prong in the definition of ''control'' to that provided in the BHC Act, *i.e.,* that control exists if the Federal Reserve has determined, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the company.[83] Including this prong will ensure that in the case in which the Federal Reserve has made such a determination, the FDIC would have the relevant records with respect to QFCs with that entity. Likewise, eliminating the proposed consolidation prong of the definition of ''control,'' *i.e.,* that an entity controls another entity if it must consolidate another entity for financial or regulatory purposes, will avoid the possibility of capturing entities that are not affiliates of the counterparty for purposes of Title II.

As to the determination of which members of a corporate group would be records entities, the Secretary has adopted the request of commenters, referenced above, to define ''records entity'' by reference to whether an entity is consolidated under accounting standards. Specifically, under the Final Rules, ''records entity'' is defined to include a member of a corporate group that consolidates, is consolidated with, or is consolidated by the financial company member of the corporate group that meets the other criteria of the definition of ''records entity,'' *e.g.,* the asset and derivatives thresholds. The rules provide that with respect to financial companies that are not subject to such accounting principles or standards, for instance because they are not required to prepare financial statements, such member of the corporate group would be a ''records entity'' if it would consolidate, be consolidated by, or be consolidated with such financial company if such principles or standards applied.

This change addresses the concerns identified by commenters that members of a corporate group would not have access to the records of a minority-owned entity or joint venture and is intended to better align the identification of records entities in a way that comports with existing recordkeeping practices by corporate groups. The modification of the definition of ''records entity'' is also responsive to concerns from commenters that the scope of the Proposed Rules would have been too broad, given that reference to accounting consolidation generally requires a higher level of an affiliation relationship than the 25 percent voting interest standard of the BHC Act definition of ''control.''

Two commenters stated that the definition of ''affiliate'' could deem investment companies that are ''seeded'' with an initial capital investment by the fund's sponsor to be affiliates of that sponsor during the period before such a fund attracted third party investors.[84] The changes made to the definition of ''records entity'' in the Final Rules should greatly limit the circumstances in which this is likely to arise. In the event that such a seeded fund were to be deemed a records entity under the rules, the fund would be able to request an exemption from the recordkeeping requirements of the rules for the duration of the seeding period.

Non-U.S. Entities: Because the Proposed Rules incorporated the Title II definition of ''financial company,'' the Proposed Rules applied only to entities incorporated or organized in the United States.[85] One commenter argued that the records of foreign affiliates of U.S. broker-dealers should be subject to the recordkeeping requirements.[86] However, the Secretary's authority to adopt recordkeeping rules under section 210(c)(8)(H) only extends to financial companies as defined in Title II of the Act; therefore, entities that are not incorporated or organized within the United States, including foreign affiliates of records entities, are not subject to the Final Rules.

b. Scope of Final Rules

Section 148.1(a) of the Final Rules provides that the recordkeeping requirements apply to each financial company that qualifies as a records entity and, with respect to section 148.3(a), to the top-tier financial company of a corporate group. As discussed above, the Secretary received numerous comments on the Proposed Rules pertaining to the definition of ''records entity.'' Section 210(c)(8)(H) of the Dodd-Frank Act gives the Secretary broad flexibility in determining the scope of the recordkeeping requirements as necessary or appropriate in order to assist the FDIC as a receiver for a covered financial company in being able to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act. Section 210(c)(8)(H) also requires the regulations to differentiate among financial companies, as appropriate, by taking into consideration their size, risk, complexity, leverage, frequency and dollar amount of QFCs, interconnectedness to the financial system, and any other factors deemed appropriate. As discussed earlier, the Secretary has complied with these requirements and consulted extensively with the FDIC.

The Secretary anticipates that records entities may include the following types of financial companies:[87] (i) Broker-dealers, investment advisers, investment companies, swap dealers, security-based swap dealers, major swap participants, major security-based swap participants, derivatives clearing organizations, and clearing agencies; (ii) bank holding companies or bank holding company subsidiaries (that are not insured depository institutions or other types of excluded entities); savings and loan

[83] *See* 12 U.S.C. 1841(a)(2)(C).

[84] *See* TIAA–CREF letter, p. 6; ICI letter, p. 10.

[85] *See* 12 U.S.C. 5381(a)(11)(A).

[86] *See* Better Markets letter, pp. 16–19.

[87] Not all of these entities would qualify as records entities subject to the Final Rules because of conditions in the definition of records entity related to asset size and level of derivatives activity. ''Financial company'' includes any company that is incorporated or organized under any provision of federal law or the laws of any state and is predominantly engaged in activities that the Board of Governors has determined are financial in nature for purposes of section 4(k) of the BHC Act. 12 U.S.C. 5381(a)(11). Activities that are ''financial in nature'' include ''providing financial, investment, or economic advisory services, including advising an investment company'' and ''issuing or selling instruments representing interests in pools of assets . . .'' and ''underwriting, dealing in, or making a market in securities.'' 12 U.S.C. 1843(k)(4).

holding companies or savings and loan holding company subsidiaries (that are not insured depository institutions or other types of excluded entity); U.S. affiliates of a foreign bank; noninsured state member banks; agencies or commercial lending companies other than a federal agency; organizations organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act; (iii) (A) nonbank financial companies that the Council has determined shall be subject to Federal Reserve supervision and enhanced prudential standards under section 113 or (B) financial market utilities that the Council has designated as, or as likely to become, systemically important under section 804; (iv) subsidiaries of State non-member insured banks that are not supervised on a consolidated basis with the State non-member insured bank, or financial companies that are not supervised by a PFRA; and (v) other non-bank financial companies satisfying criteria set forth in the Final Rules.

2. Purpose

Section 148.1(b) of the Proposed Rules provided that the purpose of the rules is to establish QFC recordkeeping requirements for a records entity in order to assist the FDIC as receiver for a covered financial company. The Secretary did not receive any comments requesting changes to this section and has not modified it from the Proposed Rules.

3. Effective Date and Compliance Dates

a. Initial Compliance Dates

Section 148.1(c) of the Proposed Rules provided that the rules would become effective 60 days after publication of the Final Rules in the **Federal Register**. Section 148.1(d)(1) of the Proposed Rules provided that each entity that constitutes a records entity on the date the rules become effective would be required to provide each of its PFRAs and the FDIC a point of contact responsible for recordkeeping under the rules and to comply with all the other requirements of the rules within 270 days of the effective date. For a records entity that becomes subject to the rules after they become effective, compliance with the point of contact requirement would have been required within 60 days after such entity becomes subject to the rules and compliance with all the other requirements of the rules would have been required within 270 days after such entity becomes subject to the rules.

Several commenters submitted that the proposed compliance period would be an inadequate amount of time for implementation because of the significant information systems upgrades and changes in recordkeeping practices that commenters said would be required for implementation.[88] Some commenters suggested that the initial compliance period should be extended to two years.[89] Other commenters suggested that compliance should be phased in in stages, with staggered compliance dates for various types of QFCs [90] or for entities based on the size of their QFC portfolios, with entities with the largest QFC portfolios required to comply first under the assumption that they would be more likely to have the infrastructure in place to comply with the recordkeeping requirements.[91]

In response to these comments, the Final Rules provide additional time to all records entities to comply with the requirements of the rules. All records entities will have 90 days after the effective date of the rules to comply with the requirement to provide point of contact information to their PFRAs and the FDIC; this extension will provide additional time to financial companies to determine whether they are records entities under the rules. As to the remainder of the requirements of the rules, the Final Rules provide staggered compliance dates that will provide all records entities with additional time to comply with the recordkeeping requirements. The Final Rules provide that records entities with $1 trillion or more in total consolidated assets and the financial company members of their corporate group will have 540 days (approximately 18 months) after the effective date to comply with the rules. The Secretary understands that only the four largest G–SIBs would meet this threshold on the effective date. The Secretary has determined that it is important for data on the largest, most systemically important entities to be available as soon as reasonably possible. The FDIC has advised that, in general, large insured depository institutions subject to the Part 371 recordkeeping requirements have been able to comply with those requirements within 270 days. Although the recordkeeping requirements under the Final Rules are more detailed in many respects than those under Part 371, the Secretary believes that the extra time allotted for compliance should be sufficient to allow the largest financial companies to adapt the processes, procedures, and systems to comply with the Final Rules.

Under the Final Rules, all other records entities will have at least two years to comply with the rules' recordkeeping requirements. Records entities with total assets equal to or greater than $500 billion (but less than $1 trillion) and financial company members of the corporate group of such entities will have two years from the effective date to comply. Records entities with total assets equal to or greater than $250 billion (but less than $500 billion) and financial company members of the corporate group of such entities will have three years from the effective date to comply. All other records entities will have four years from the effective date to comply.

The Final Rules provide for a staggered schedule based on the total consolidated assets of the records entities (or other members of their corporate group) on the understanding that larger entities will generally have greater capacity to apply to the task of coming into initial compliance with the rules. In addition, because the Department of the Treasury and the FDIC anticipate providing guidance to records entities as they work to come into compliance with the rules, the staggered compliance schedule will permit staff of the Department of the Treasury and the FDIC to allocate their resources to address more efficiently requests for guidance from each tier of records entities in turn. The commenter's proposal to provide for staggered compliance based on type of QFC would mean that the FDIC would not have records that would be of meaningful usefulness under Title II until the final compliance deadline had been met, given the requirement, discussed above, that if the FDIC as receiver decides to (i) transfer any QFC with a particular counterparty, it must transfer all QFCs between the covered financial company and such counterparty and any affiliate of such counterparty to a single financial institution and (ii) disaffirm or repudiate any QFC with a particular counterparty, it must disaffirm or repudiate all QFCs between the covered financial company and such counterparty and any affiliate of such counterparty. In contrast, the compliance schedule provided for in the Final Rules would provide the FDIC with complete records for a successively larger set of companies.

The Final Rules provide that a financial company that becomes a records entity after the effective date

[88] *See* ACLI letter, pp. 19–20; OCC letter, p. 12; SIFMA AMG letter, pp. 13, 22–23.

[89] *See* Regional Banks letter, p. 4; SIFMA AMG letter, p. 13.

[90] *See* TCH et al. letter, p. 23.

[91] *See* ACLI letter, pp. 15–16.

must provide point of contact information within 90 days of becoming a records entity and must comply with all other applicable requirements of the rules within 540 days of becoming a records entity or within the remainder of the applicable initial compliance period if it has not yet expired, whichever period is longer. The Secretary believes that this amount of time will be sufficient given that financial companies generally should be able to anticipate meeting the criteria for being deemed a records entity in advance of crossing the total assets and derivatives thresholds.

b. Subsequent Compliance Dates

Under Section 148.1(d)(2) of the Proposed Rules, a financial company that no longer qualifies as a records entity would have been permitted to cease maintaining records one year after it ceases to qualify as a records entity. The definition of ''records entity'' in section 148.2(n) of the Final Rules provides that a company that is a records entity by virtue of exceeding the total assets and derivatives exposure thresholds shall remain a records entity until one year after it ceases to meet the total assets and derivatives exposure thresholds. Financial companies that are members of such a corporate group would be subject to the same provision. However, in a change from the Proposed Rules, any company that is a records entity because it meets the other criteria of the definition shall cease to be a records entity and thus shall cease to be subject to the rules immediately upon ceasing to meet such criteria. For example, a nonbank financial company with respect to which the Council rescinds a determination under section 113 would no longer be a records entity upon such rescission.

The Proposed Rules provided that a financial company that becomes subject to the rules again after it had ceased recordkeeping would be required to comply with the requirements of the rules within 90 days of the date it again becomes subject to the rules. The Final Rules extend that period to 365 days, but if a longer period still remains under the applicable initial compliance period discussed above, the entity has until the end of that longer period to comply with the rules.

c. Extensions of Compliance Dates

Section 148.1(d)(3) of the Final Rules, consistent with section 148.3(c)(3) of the Proposed Rules, authorizes the Secretary, in consultation with the FDIC, to grant extensions of time with respect to compliance with the recordkeeping requirements. As discussed in the Supplemental Information to the Proposed Rules, it is anticipated that such extensions of time would apply when records entities first become subject to the rules and likely would not be used to adjust the time periods specified in the maintenance and updating requirements of section 148.3(b) of the Final Rules. Extensions of time may also be appropriate on a limited basis with respect to a records entity that is temporarily incapable of generating records due to unforeseen technical issues.

d. Compliance by Top-Tier Financial Company

Finally, section 148.1(d)(4) of the Final Rules provides that a top-tier financial company must comply with the requirement, discussed below, to be capable of generating a single, compiled set of records of all the members of its corporate group on the same date as the date on which the records entity members of the corporate group of which it is a member are required to comply with this part.

B. General Definitions

In addition to the definitions described in detail above in reference to the scope of the Proposed Rules, certain additional terms were defined in the Proposed Rules to describe a records entity's recordkeeping obligations. The Secretary did not receive any comments on these definitions.

The definition of ''primary financial regulatory agency'' has been revised to include, with respect to a financial market utility that is subject to a designation pursuant to section 804 of the Act, the Supervisory Agency for that financial market utility, as defined in section 803(8) of the Act, if such financial market utility would not otherwise have a PFRA.[92]

The term ''total assets,'' which is used both in the definition of ''records entity'' and for determining a particular records entity's compliance date, is defined in the Final Rules by reference to the audited consolidated statement of financial condition submitted to the financial company's PFRAs or, if no such statement is submitted, to the financial company's consolidated balance sheet for the most recent fiscal year end, as prepared in accordance with GAAP or other applicable accounting standards. This definition is unchanged from the Proposed Rules other than the addition of the reference to GAAP or other applicable accounting standards. One commenter proposed excluding from the definition of ''total assets'' any assets under management, even if those assets are included on a balance sheet under applicable accounting standards.[93] The Secretary has decided, for the sake of consistency and to allow for ease of determination as to what a financial company's total assets are, not to provide such an exclusion. However, to the extent assets under management are not reflected on a financial company's consolidated statement of financial condition or consolidated balance sheet, as applicable, such assets would not be included within the definition of ''total assets.''

The Final Rules also include several additional definitions. A definition of ''legal entity identifier,'' previously provided in the appendix, has been added to section 148.2. In addition, a definition of ''parent entity'' has been added because, as discussed below, the appendix has been revised in the Final Rules to require information regarding the immediate and ultimate parent entity of a counterparty to a QFC rather than a full organizational chart for each counterparty. In order to align with the definition of ''affiliate'' in Title II, as discussed above, ''parent entity'' is defined in the Final Rules as ''an entity that controls another entity.''

Because, as discussed above, the Final Rules exclude insurance companies from the definition of ''records entity,'' a definition of ''insurance company'' has been added. In addition to incorporating the definition of ''insurance company'' provided in Title II, the definition in the Final Rules includes mutual insurance holding companies that meet the conditions, specified by the FDIC in part 380 of its rules, for being treated as an insurance company for the purpose of section 203(e) of the Act.[94] The Final Rules also

[92] 12 U.S.C. 5462(8).

[93] *See* SIFMA AMG letter, p. 10.

[94] A mutual insurance holding company is created through the restructuring of a mutual insurance company into two entities, a mutual insurance holding company and a stock insurance company that is converted from the original mutual insurance company. The FDIC excluded mutual insurance holding companies that meet the conditions specified in its rules in order to address concerns that, because, under applicable state laws, a mutual insurance holding company generally is prohibited from selling policies of insurance, it might not fit squarely within a literal reading of the statutory definition of insurance company under the Dodd-Frank Act. The FDIC also noted that state law generally subjects a mutual insurance holding company to liquidation or rehabilitation under the state regime if the converted mutual insurance company is placed in liquidation or rehabilitation and that in the liquidation of a converted mutual insurance company, the assets of the mutual insurance holding company generally are included in the estate of the converted mutual insurance company being liquidated. *See* 77 FR 25349, 25349–50 (April 30, 2012).

include definitions of ''gross notional amount of derivatives outstanding'' and ''derivative liabilities,'' as discussed above, and a definition of ''top-tier financial company,'' as discussed below.

C. Form, Availability, and Maintenance of Records

1. Form and Availability

Generally applicable requirements. Section 148.3(a)(1) of the Proposed Rules provided that a records entity must maintain all records in electronic form in the format set forth in the appendix to the Proposed Rules. The Proposed Rules further provided that all affiliated records entities in a corporate group must be able to generate data in the same data format and use the same unique counterparty identifiers to enable the aggregation of data. As explained in the Supplemental Information to the Proposed Rules, the FDIC would use the aggregation of counterparty positions to determine the effects of termination or transfer of QFCs. The Secretary requested comments on whether the rules should require that the parent company of a corporate group aggregate the records of the records entities of the corporate group.[95] The Secretary, after consulting with the FDIC, has determined that it is important that the FDIC be able to receive a single set of compiled records from a corporate group in order to allow it to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act under the short time frame provided in Title II.

Accordingly, section 148.3(a)(1) has been revised in the Final Rules to provide that a top-tier financial company, defined as a financial company that is a member of a corporate group consisting of multiple records entities and that is not itself controlled by another financial company, must be able to generate a single, compiled set of the records, in electronic form, for all records entities in the corporate group that it consolidates or are consolidated with it, in a format that allows for aggregation and disaggregation of such data by records entity and counterparty. By limiting this requirement to records of records entities that are consolidated by or with the top-tier financial company, the Secretary has sought to avoid circumstances in which the top-tier financial company might not have access to the records it is required to compile. The top-tier financial company may comply with this requirement by providing that any of its affiliates or any third-party service provider maintains the capability of generating the single, compiled set of the records, in electronic form, for all records entities in the corporate group; provided, however, that the top-tier financial company shall itself maintain records under this part in the event that such affiliate or service provider shall fail to maintain such records.[96] Given that the Proposed Rules would have required each records entity in a corporate group to generate data in the same format, the Secretary does not anticipate that this will place a significant additional burden on records entities. Section 148.3(a)(2) of the Proposed Rules has been consolidated in the Final Rules with section 148.4, as discussed below under section II.D.1.

Section 148.3(a)(3) of the Proposed Rules provided that each records entity designate a point of contact to enable its PFRA and the FDIC to contact the records entity with respect to the rules and to update this information within 30 days of any change. The Secretary did not receive any comments on this subsection, which in the Final Rules appears as section 148.3(a)(2), and has not modified it from the Proposed Rules, other than by subjecting the top-tier financial company of a corporate group to this requirement and by making certain technical changes.

Section 148.3(a)(4) of the Proposed Rules provided that each records entity that is regulated by a PFRA be capable of providing all QFC records specified in the rules to its PFRA within 24 hours of request. This provision has been revised as section 148.3(a)(3) of the Final Rules to provide that the records entity is required to be capable of providing electronically, within 24 hours of the request of the PFRA, all QFC records specified in the rules to both its PFRA and the FDIC. This change has been made to ensure that the records will be maintained in a format that is compatible with the FDIC's systems and to avoid any delay resulting from the records having to be transmitted from the PFRA to the FDIC.[97] This provision also provides that the top-tier financial company of a corporate group be required to be capable of providing, upon the request of the PFRA, the compiled set of records for all records entities of the corporate group to both its PFRA and the FDIC.

Request for reliance on existing recordkeeping requirements. Commenters suggested that the records required under the Proposed Rules be made consistent with supervisory recordkeeping or reporting requirements for derivatives imposed by other federal regulatory agencies.[98] However, the types of financial contracts included within the scope of other derivatives recordkeeping and reporting requirements is not as broad as the definition of QFCs under the Dodd-Frank Act.[99] Further, the scope of entities required to maintain records under such other recordkeeping and reporting rules is different from that under the Final Rules, given their differing purposes. Finally, reliance on a collection of records maintained under different recordkeeping and reporting regimes would not permit the aggregation of data that will be necessary for the receiver to comply with the time frame under which the FDIC as receiver must take action with respect to the covered financial company's QFCs under the statutory constraints discussed above.

Request for exclusion of certain types of transactions. One commenter proposed that the recordkeeping requirements of the Final Rules not apply to QFCs that are for the purchase and sale of securities such as typical cash transactions that settle on a delivery-versus-payment basis or settle within a fixed number of days following the transaction date.[100] The commenter argued that (i) these short-term transactions are not relevant to the FDIC for the purposes of its decision making under Title II, (ii) the significant volume of these transactions that would be reported on any given day would overwhelm and obscure otherwise relevant data, and (iii) for those transactions that are exchange traded, only the settlement system and the

[95] *See* 80 FR 966, 975.

[96] It is possible that there could be more than one top-tier financial company in a corporate group, particularly in the circumstance in which the top-tier parent entity of the group is not itself a financial company; in such a case, the top-tier financial companies would presumably provide that only one of them, or an affiliate or service provider, would maintain the capability of generating the single, compiled set of the records for all records entities in the corporate group.

[97] One commenter requested that the Secretary provide clarification that, given the global nature of many financial companies that would be records entities under the rule, a request for records made before 5:00 p.m., eastern time on a given day must be satisfied by 5:00 p.m. eastern time on the following day. *See* TCH et al. letter, p. 23. This is not the intention of Secretary in adopting the 24 hour requirement.

[98] *See* SIFMA AMG letter, pp. 12–13; DTCC letter, p. 7; ACLI letter, p. 20; Capital Group letter, pp. 3–4.

[99] For example the CFTC's swap data recordkeeping requirement at 17 CFR part 46 covers ''swaps,'' which does not include certain contracts such as commodity contracts and margin loans that are included in the definition of QFCs under the Dodd-Frank Act.

[100] *See* TCH/SIFMA letter.

clearing agency would be listed as direct counterparties, which should simplify the FDIC's decisions with respect to such transactions. The commenter offered similar arguments with respect to QFCs entered into with retail customers or as part of a records entity's retail or brokerage account activities.

All QFCs, regardless of their tenor, their volume, and how they are settled, are subject to the requirement, discussed above, that if the FDIC as receiver determines (i) to transfer any QFC with a particular counterparty, it must transfer all QFCs between the covered financial company and such counterparty and any affiliate of such counterparty to a single financial institution or (ii) to disaffirm or repudiate any QFC with a particular counterparty, it must disaffirm or repudiate all QFCs between the covered financial company and such counterparty and any affiliate of such counterparty. The large volume of these short-term transactions supports the determination that the QFC information required to be provided must be maintained in the standard format specified in the rules to ensure rapid aggregation and evaluation of the information by the receiver. Whether these transactions are exchange traded will not necessarily affect the FDIC's decision as to whether to transfer the QFCs in question; rather, the FDIC's decision as to whether to transfer a particular counterparty's QFCs will be based on an evaluation of the other information required to be collected under the Final Rules and on an evaluation of the impact of such transfer on the receivership and U.S. financial stability. Furthermore, for corporate groups that include members that are subject to different recordkeeping regimes, permitting entities to rely on their existing records would not be consistent with the requirement for the top-tier financial company to be capable of generating a single, compiled set of QFC records in a format that allows for aggregation and disaggregation of such data. The Secretary notes, however, that under the exemptive process provided in the rules and discussed below, a records entity may apply for relief from particular requirements as to the information to be maintained by a records entity for a particular type of QFC or counterparty. Any exemptive relief requested with respect to a particular type of QFC or counterparty would need to be defined in such a way as to ensure consistency of treatment by each records entity.

2. Maintenance and Updating

Section 148.3(b) of the Proposed Rules would have required that each records entity maintain the capacity to produce QFC records on a daily basis based on previous end-of-day records and values. The Secretary has clarified in the Final Rules that, if records are maintained on behalf of a records entity by an affiliate or service provider, such records entity shall itself maintain records under this part in the event that such affiliate or service provider fails to maintain such records. The Secretary confirms that, as was suggested by a commenter, the information required to be capable of being provided shall be with respect to QFCs as of the end of the day on the date the request is provided.[101]

3. Exemptions

a. Requests for Exemptions

Section 148.3(c) of the Proposed Rules provided that upon written request by a records entity, the FDIC, in consultation with the PFRAs for the records entity, may recommend that the Secretary grant a specific exemption from compliance with one or more of the requirements of the rules. In addition, under the Proposed Rules, the Secretary would also have been permitted to issue exemptions that have general applicability upon receipt of a recommendation from the FDIC, in consultation with the PFRAs for the applicable records entities.

One commenter suggested that exemptions should be granted by the PFRAs for a records entity rather than by the Secretary.[102] Another commenter suggested that exemption recommendations should be made by the PFRAs rather than by the FDIC.[103] A third commenter suggested that the exemption process should be streamlined to involve only one agency.[104] After considering these comments, the Secretary is adopting the provision for granting exemptions substantially as proposed, with certain modifications as described below. The Secretary believes that the Act does not authorize the Secretary, as Chairperson of the Council, to delegate decision making authority with respect to these rules to other agencies. In making any decision regarding exemptions, the Secretary continues to believe that it is appropriate to obtain a recommendation from the FDIC, prepared in consultation with the PFRAs for the relevant records entities. The provision for a recommendation from the FDIC is consistent with the requirement that the Secretary consult with the FDIC in adopting these rules and reflects the fact that the FDIC is the intended user of the QFC records. Including the PFRAs for the relevant records entities in the exemption process recognizes their familiarity with the operations of the records entities. The Final Rules have been modified to clarify that, even if the FDIC does not make a recommendation, the Secretary nevertheless may make a determination to grant or deny an exemption request.

In addition, the Secretary has simplified the exemption provision by consolidating the separate provisions for general and specific exemptions and has specified in the Final Rules what a request for an exemption must contain. In determining whether to grant any requests from records entities for exemptions, the Secretary may take into consideration their size, risk, complexity, leverage, frequency and dollar amount of QFCs, interconnectedness to the financial system, and any other factors deemed appropriate, including whether the application of one or more requirements of the rules is not necessary or appropriate to achieve the purpose of the rules.

b. De Minimis Exemption

Several commenters argued that the requirements of the Proposed Rules should not apply to records entities that have a minimal level of QFC activity. Commenters noted that a financial company might be subject to the recordkeeping requirements of the Proposed Rules even if it is a party to only a single QFC.[105] One commenter suggested that the definition of ''records entity'' exclude any financial company that, over the immediately preceding 12 months, (i) had fewer than 50 unaffiliated counterparties or entered into fewer than 100 QFC transactions with non-affiliates and (ii) entered into QFCs having a gross notional value equal to or less than $2.5 billion.[106] Another commenter proposed providing varying de minimis thresholds for each type of QFC, with different levels set to reflect the different risks associated with each type of QFC.[107]

After consideration of these comments, the Secretary has determined that an exemption from the preponderance of the recordkeeping

[101] *See* TCH et al. letter, p. 23.

[102] *See* Capital Group letter, p. 4.

[103] *See* ICI letter, p. 10.

[104] *See* OCC letter, p. 8.

[105] *See* ACLI letter, p. 15; TCH et al. letter, p. 11; TIAA–CREF letter, p. 7; CWEG letter, pp. 4–5.

[106] *See* TCH/SIFMA letter.

[107] *See* ACLI letter, p. 15.

requirements of the rules is appropriate for records entities that have a minimal level of QFC activity such that if the FDIC were appointed as receiver for any such records entity, the FDIC would be in a position to make the requisite determinations with respect to the treatment of QFCs during the stay period even in the absence of the records required to be maintained under the rules. The Secretary considered a number of different approaches to setting the threshold for the de minimis exemption, including the gross notional value of a records entity's QFC portfolio over a defined period, the number of discrete unaffiliated QFC counterparties, and the number of open positions. The Secretary determined that gross notional value would not be an appropriate metric because the gross notional amount of a QFC portfolio is not a good proxy for the difficulty the receiver would have in assessing the QFC portfolio and in making the requisite determinations with speed and accuracy. For instance, a single interest rate swap that exceeds a specified threshold may easily be reviewed by the receiver without standardized recordkeeping. By contrast, a records entity may have a QFC portfolio that falls below the threshold but is comprised of hundreds of open positions, such that the portfolio would pose challenges for the receiver to review and act upon during the one business day stay period and thus would necessitate the advance recordkeeping required by the rules. Likewise, the Secretary determined that neither the risk each type of QFC might pose, even if that were something that could be distinguished for purposes of these rules, nor any of the other factors listed in section 210(c)(8)(H)(iv) would be relevant to the question of how many QFCs a receiver will be able to review during the one business day stay period.

The recordkeeping requirements of Part 371 of the FDIC's rules relax the recordkeeping requirements for institutions with fewer than twenty open QFC positions. Based on its experience with Part 371, the FDIC advised that a receiver should be able to exercise its statutory rights and duties under the Dodd-Frank Act relating to QFCs without having access to standardized records for any records entity that is a party to no more than 50 open QFC positions. Having considered the comments received and the FDIC's experience with evaluating QFC portfolios, the Secretary has provided in the Final Rules that any records entity that is a party to no more than 50 open QFC positions is not required to maintain the records described in section 148.4 other than the copies of the documents governing QFC transactions between the records entity and each counterparty as provided in section 148.4(i). This exemption provides further differentiation among financial companies and reduces the burden of the rules without compromising the ability of the FDIC to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), and (10).

D. Content of Records

1. General Information

Section 148.4 of the Final Rules requires each records entity to maintain the data listed in the appendix tables, copies of the documents that govern QFCs, and lists of vendors directly supporting the QFC-related activities of the records entity and the vendors' contact information with respect to each QFC to which it is a party. As discussed above, the Final Rules have been simplified so as not to separately require that a full set of records be maintained with respect to the underlying QFCs for which a records entity provides a guarantee or other credit enhancement. Instead, as discussed below, certain fields specific to the provision by a records entity of a guarantee of a QFC or of another type of credit enhancement of a QFC have been added to the tables in the Final Rules.

The Proposed Rules would have also required that records entities maintain any written data or information that is not listed in the appendix tables that the records entity is required to provide to a swap data repository, security-based swap data repository, the CFTC, the SEC, or any non-U.S. regulator with respect to any QFC, for any period that such data or information is required to be maintained by its PFRA. Having considered a comment received indicating that this would be unduly burdensome,[108] the Secretary has chosen to eliminate these requirements as not sufficiently significant to the receiver to justify the burden they would place on records entities.

The Proposed Rules provided that a records entity also would be required to maintain electronic, full-text searchable copies of all agreements that govern the QFC transactions subject to the rules, as well as credit support documents related to such QFC transactions. Having considered the comments received indicating that the requirement that such electronic documents be full-text searchable would be unduly burdensome,[109] the Secretary has decided to omit this requirement as not sufficiently significant to the receiver to justify the burden it would place on records entities. No comments were received on the proposed requirement that each records entity maintain a list of vendors directly supporting the QFC-related activities and the contact information for such vendors, and this provision has been retained without change in the Final Rules. The Proposed Rules also provided that each records entity would be required to maintain information about the risk metrics used to monitor the QFC portfolios and contact information for each risk manager. The Secretary has decided to eliminate this requirement as not sufficiently significant to the receiver to justify its burden on records entities.

2. Appendix Information

For the receiver to make a well-informed decision that complies with the requirements of Title II discussed in section I, the receiver must have sufficient information to fully evaluate and model various QFC transfer or termination scenarios as well as the potential impact of its transfer or retention decisions. To perform this analysis in the extremely limited time frame provided by Title II, the receiver must have access to data on the QFC positions of the records entity, net QFC exposures under applicable netting agreements, detailed and aggregated collateral positions of the records entity and of its counterparties, and information regarding certain key provisions of the legal agreements governing the QFC transactions. Many commenters recognized the importance of maintaining detailed records of QFCs for use by the FDIC if it were appointed as receiver under Title II; however, several commenters expressed concern that the requirements of Tables A–1 through A–4, as proposed, were overly burdensome and would require maintenance of data that is different in content or format from that currently tracked or collected in the ordinary course of business or for other regulatory purposes.[110]

The appendix to the Final Rules preserves the basic structure and content of the data tables included in the Proposed Rules. However, the Secretary has eliminated data fields that the Secretary decided would not provide a sufficiently significant benefit to the FDIC as receiver to justify the

[108] *See* TCH et al. letter, p. 17.

[109] *See* TCH et al. letter, pp. 18–19; ACLI letter, pp. 18–19.

[110] *See* TCH et al. letter, pp. 15, 20; ACLI letter, pp. 17–18; SIFMA AMG letter, pp. 12–13; TIAA–CREF letter, p. 2.

burden they would place on records entities. Further, the Final Rules add four master data lookup tables, composed largely of requirements that previously appeared in the four data tables of the Proposed Rules, in order to reduce the burden on records entities and improve the tables' functionality for the receiver. These include: (1) A corporate organization master data lookup table; (2) a counterparty master data lookup table; (3) a booking location master data lookup table; and (4) a safekeeping agent master data lookup table.

The master data lookup tables are cross-referenced to one or more of Tables A–1 through A–4 and provide a centralized site for records of affiliate, counterparty, booking location, and safekeeping agent data, which eliminates the need for a records entity to include duplicative data in Tables A–1 through A–4 and thereby makes it easier for a records entity to enter and update the data included in those Tables. In particular, the records entity members of a corporate group, which are required to utilize common identifiers for shared counterparties, will be able to use the same counterparty consolidated corporate master lookup table for a given counterparty. For example, if there were several records entities in a corporate group and each was a party to one or more QFCs with a particular counterparty, use of the counterparty master lookup table would enable the information as to that counterparty to be entered only once. The lookup table format, which conforms to customary information technology practices, will also allow for smaller file sizes by eliminating repetitive entries, thereby reducing the burden of maintaining the records and maintaining the capability of transmitting them to the FDIC and the records entity's PFRA.

Each table contains examples and, as relevant, instructions for recording the required information and an indication of how the FDIC as receiver would apply the required information. A records entity may leave an entry blank for any data fields that do not apply to a given QFC transaction, agreement, collateral item, or counterparty. For example, if a QFC is not collateralized, the data fields that relate to collateral may be left blank (in the case of character fields) or given a zero value (in the case of numerical fields).

Several commenters noted that the scope of the recordkeeping requirements in the appendix is more extensive than that of the recordkeeping requirements in the appendix to Part 371.[111] As noted in the Supplementary Information to the Proposed Rules, the recordkeeping requirements of the rules have been informed by the FDIC's experience in evaluating multiple QFC portfolios of insured depository institutions.

a. Table A–1—Position-Level Data

Table A–1 requires each records entity to maintain detailed position-level data to enable the FDIC as receiver to evaluate a records entity's QFC exposure to each of its counterparties on a position-by-position basis. The records required by the table include critical information about the type, terms, and value of each of the records entity's QFCs. Position-level information must be available for each counterparty, affiliate, and governing netting agreement to allow the FDIC as receiver to model the potential impacts of its decisions relating to the transfer or retention of positions. This information will also enable the FDIC to confirm that the netting-set level data provided in Table A–2, such as the market value of all positions in the netting set (A2.6), based on the aggregated data from Table A–1, is accurate and can be validated across different tables. In addition, position-level information will assist the receiver or any transferee in complying with the terms of the records entity's QFCs and thereby reduce the likelihood of inadvertent defaults.

In response to comments received, the Secretary has made several changes to Table A–1 that will reduce the recordkeeping burden. One commenter recommended elimination of the requirement to identify the purpose of a QFC position, stating that this could involve a complicated analysis and impose a substantial burden on records entities. The commenter stated that a QFC position may have multiple purposes that may change over time such that any identified purpose would be of minimal value to the receiver.[112] In response to this comment, the Secretary has eliminated from Table A–1 the requirement to identify the purpose of each QFC.

One commenter also recommended eliminating the requirement to maintain operational and business-level details relating to QFC positions, such as the identification of related inter-affiliate positions, trading desk identifiers, and points of contact. The commenter stated that such operational and business-level details are subject to frequent change that would require frequent updates by records entities and submitted that this information would likely be of limited value to the receiver.[113] In consideration of this comment, the Secretary has decided to eliminate both the requirement to maintain data on related inter-affiliate positions and the requirement to maintain contact information for the person at the records entity responsible for each position. The Secretary has replaced the inter-affiliate fields of the Proposed Rules with a narrower requirement to link only related positions, if any, to which the records entity itself is a party (A1.22). All positions of a particular records entity that are reported on Table A–1 and that are related to one another should have the same designation in this field. The requirement to identify loans related to a QFC position has also been retained (A1.23–24). In addition, in recognition that it may be necessary for the FDIC, in determining whether to transfer a QFC, to locate the personnel at a records entity who are familiar with a particular position and can provide the receiver with additional information on the position, the Final Rules require a records entity to provide, in the booking location master table, identifiers for the booking unit or desk, a description of the booking location, and contact information for the desk associated with a QFC (BL.3–BL.7).

One commenter stated that the requirement to provide information based on a classification under GAAP or IFRS may not be appropriate if the records entity follows a different accounting standard.[114] In response to this comment, the Secretary has decided to require that each records entity maintain the asset classification available under any accounting principles or standards used by the records entity (A1.18). If no asset classification scheme is available under any accounting principles or standards used by a records entity, the records entity may leave the entry blank.

To further reduce the burden of Table A–1, the Secretary has eliminated the following proposed data fields in the Final Rules: Industry code (GIC or SIC code); position standardized contract type; and documentation status of the position.

The Final Rules include two additional fields to Table A–1 based on the FDIC's experience with implementing Part 371. The Secretary believes that the addition of these fields should impose minimal, if any, additional burden on a records entity. The first addition is a data field for the

[111] *See* TCH et al. letter, p. 20; Capital Group letter, p. 3.

[112] *See* TCH et al. letter, pp. 20–21.

[113] *See* TCH et al. letter, p. 19.

[114] *See* ACLI letter, p. 18.

date that the data maintained in the table was extracted from the records of the records entity (A1.1). Because records entities may derive data from multiple systems in multiple locations, information on the date that data was extracted is necessary to enable the receiver to assess whether all recorded information is current. The data extraction date field has been included in each of the tables of the appendix.

A netting agreement counterparty identifier field (A1.10) has also been added to the table. Based on the FDIC's experience with the implementation of Part 371, the FDIC has advised that it is necessary for the rules to address circumstances in which the counterparty to a QFC is different from the counterparty securing the QFC (for example, if an affiliate of the QFC counterparty is providing collateral for the position). In such cases, the netting agreement counterparty identifier is necessary to enable the receiver to link certain position-level data from Table A–1 to the applicable netting-set level data under Table A–2.

In addition certain fields specific to guarantees of QFCs provided by the records entity and other credit enhancements of QFCs provided by the records entity have been added to the table, including the type of QFC covered by the guarantee or other third party credit enhancement (A1.7.1) and the underlying QFC obligor identifier (A1.7.2). Further, the Final Rules include fields requiring identification of any credit enhancement that has been provided by a third party with respect to a QFC of the records entity (A1.21.1–.5).

As in the Proposed Rules, Table A–1 under the Final Rules requires that a records entity be identified by its legal entity identifier (''LEI''). In order for an LEI to be properly maintained, it must be kept current and up to date according to the standards established by the Global LEI Foundation. In addition, to the extent a records entity uses a global standard unique transaction identifier or unique product identifier to identify a QFC for which records are kept under these rules, the records entity should use such identifiers in completing fields A1.3 and A1.7, respectively. The Secretary has made this change in recognition of the ongoing work of the Committee on Payments and Market Infrastructures and the Board of the International Organization of Securities Commissions to establish such global identifiers.

b. Table A–2—Counterparty Netting Set Data

Table A–2, which specifies the information to be maintained regarding aggregated QFC exposure and collateral data by counterparty, has been adopted in the Final Rules substantially as proposed, with certain changes discussed below.

Table A–2 requires a records entity to maintain records of the aggregated QFC exposures under each netting agreement between the records entity and its counterparty. Table A–2 also requires comprehensive information on the collateral exchanged to secure net exposures under each netting agreement. Information on collateral required by the table includes the market value of collateral, any collateral excess or deficiency positions, the identification of the collateral safekeeping agent, a notation as to whether the collateral posted by a counterparty or a records entity is subject to rehypothecation, and the market value of any collateral subject to rehypothecation. The information required by Table A–2 must be maintained at each level of netting under the relevant governing agreement. For example, if a master agreement includes an annex for repurchase agreements and an annex for forward exchange transactions and requires separate netting under each annex, the information required by Table A–2 with respect to the net exposures under each annex would need to be maintained separately.

In evaluating whether to transfer or retain QFCs between a records entity and a counterparty, the receiver must be able to assess the records entity's net exposure to the counterparty (and the counterparty's affiliates), the counterparty's net exposure to the records entity, and the amount of collateral securing those exposures. Net QFC exposure data will also assist the receiver in aggregating exposures under netting agreements with a counterparty and its affiliates based on the netting rights of the entire group, in order to determine relative concentrations of risk under each applicable netting agreement. This information will assist the receiver in modeling various transfer or termination scenarios and evaluating the effects and potential impact of the FDIC's decision to transfer the covered financial company's QFCs, retain and disaffirm or repudiate them, or retain them and allow the counterparty to terminate them. Information on collateral also ensures that the FDIC as receiver is able to comply with its statutory obligation to transfer all collateral securing the QFC obligations that it elects to transfer.[115] In addition, the records required to be maintained under Table A–2 will assist the receiver in identifying any excess collateral posted by a counterparty for possible return to the counterparty should the contracts be terminated after the one business day stay period.

As discussed above, one commenter recommended eliminating the requirement to maintain operational and business-level details relating to QFC positions, including points of contact and the risk or relationship manager for each counterparty.[116] In addition to the changes made to Table A–1 in response to this comment, the Final Rules eliminate from Table A–2 the requirement to provide information on a counterparty risk or relationship manager at the records entity. However, the receiver may need contact information for the counterparty to fulfill its statutory notice requirements under section 210(c)(10) of the Act. Accordingly, the Final Rules retain the requirement, now in Table A–3, to identify a point of contact at the counterparty, but provide that the information to be maintained by the records entity is limited to the information provided by the counterparty pursuant to the notification section of the relevant QFC documentation. Accordingly, a records entity is not required to update the counterparty contact information unless the counterparty has provided to the records entity a notice of a change to this information.

The burden of Table A–2 has been further reduced in the Final Rules by elimination of the following fields: Industry code (GIC or SIC code); master netting agreement for counterparty corporate group; name of each master agreement, master netting agreement or other governing documentation related to netting among affiliates in a counterparty's corporate group; current market value of all inter-affiliate positions with the records entity; master netting agreement for records entity's corporate group; and name of each master agreement, master netting agreement or governing documentation related to netting among records entities.

An additional change was made to Table A–2 relating to the requirement in the Proposed Rules for the maintenance of records on the current market value of all positions netted under the applicable netting agreement. Table A–2 in the Final Rules retains this

[115] *See* 12 U.S.C. 5390(c)(9)(A)(i)(IV).

[116] *See* TCH et al. letter, p. 19.

requirement (A2.6) and adds a related requirement to maintain records of the aggregate current market values of all positive positions (A2.7) and, separately, of all negative positions under the netting agreement (A2.8). Providing such valuations should not pose a significant additional burden, given that the records entity is required to calculate the aggregate current market value of all positions under the netting agreement. Such aggregate positive and aggregate negative positions can be calculated by summing the applicable position-level values provided in Table A–1; however, the FDIC has advised, based on its experience implementing Part 371, that inclusion of this information in summary format will make this information more useful to the receiver in making the determinations necessary to exercise its rights and fulfill its obligations within the one business day stay period.

The Proposed Rules would have required that the amount of pending margin calls be included in the calculation of collateral positions. The Final Rules instead require information on the next margin payment date (A2.15) and the next margin payment amount (A2.16) in Table A–2. This information will assist the receiver in avoiding any failure to make a pending margin call during the one business day stay. Since the amount of pending margin calls was required to be calculated under Table A–2 as proposed to determine collateral excess or deficiency, requiring such information to be capable of being separately provided should not impose a significant additional burden.

In place of the data fields in the Proposed Rules for the legal name of any master agreement guarantor and the unique counterparty identifier of guarantor, Table A–2 includes a field for third-party credit enhancement agreement identifiers (A2.5), which clarifies that it covers unaffiliated providers of credit support and encompasses forms of support in addition to guarantees. The Final Rules also add new fields to Table A–2 (A2.4.1 and A2.5.1–.5) to provide additional information as to third-party credit enhancements. The Final Rules also add to Table A–2 certain fields necessary to link the data in Table A–2 to one or more of the other data tables or lookup tables. Finally, the Final Rules add to Table A–2 the data extraction date field discussed above.

c. Table A–3—Legal Agreement Data

Table A–3 as adopted is intended to ensure that the FDIC as receiver has available to it the legal agreements governing and setting forth the terms and conditions of each of the QFCs subject to the rules. Table A–3 requires each legal agreement to be identified by name and unique identifier (A3.3–A3.4) and requires the maintenance of records on key legal terms of the agreement, such as relevant governing law (A3.7) and information about any third-party credit enhancement agreement (A3.10–12.3).

In response to comments received on the Proposed Rules, the Final Rules include several changes to Table A–3 to reduce the recordkeeping burden. Commenters suggested eliminating the proposed requirement in Table A–3 to maintain records containing descriptions or excerpts of certain cross-default provisions, transfer restrictions, events of default, and termination events set forth in each QFC agreement or master agreement, arguing that providing this information would be extremely burdensome and of limited value to the receiver.[117] In response to this comment, the Secretary has eliminated from Table A–3 the requirements to provide any information on transfer restrictions and substantially reduced the information required as to default provisions. As to cross-defaults, the Final Rules require only that a records entity indicate whether a QFC contains a default or other termination event provision that references another entity that is not a party to the QFC and, if so, the identity of such entity (A3.8–A3.9).

To further reduce the burden of Table A–3, the Final Rules eliminate the following proposed data fields: Basic form of agreement; legal name of guarantor of records entity obligations; industry code (GIC or SIC code); and legal name of counterparty obligations.

Other changes to Table A–3 conform to those discussed above with respect to other tables, *i.e.,* inclusion of the data extraction date field (A3.1), a field for the records entity identifier (A3.2, to link the data in Table A–3 to other data tables or look-up tables), an agreement date field (A3.5) and a field to identify the underlying QFC obligation for QFCs that are guarantees or credit enhancements (A3.6.1). In addition, as noted above in the discussion of Table A–2, the counterparty contact information that was required under Table A–2 in the Proposed Rules has been moved to fields A3.13–A3.16.

d. Table A–4—Collateral Detail Data

Table A–4 requires detailed information, on a counterparty by counterparty basis, relating to the collateral received by and the collateral posted by the records entity as reported in Table A–2. This information includes, for each collateral item, the unique collateral identifier (A4.6), information about the value of the collateral (A4.7–9), a description of the collateral (A4.10), the fair value asset classification (A4.11), the collateral segregation status (A4.12), the collateral location and jurisdiction (A4.13–14), and whether the collateral is subject to rehypothecation (A4.15). This collateral detail data, together with the netting-set level collateral data in Table A–2, will enable the receiver to more fully assess the type, nature, value, and location of the collateral and to model various QFC transfer or termination scenarios. Collateral detail information will also enable the receiver to ensure that collateral is transferred together with any QFCs that it secures, as required by the Act.[118] For cross-border transactions, the comprehensive information on collateral will assist the receiver in determining the sufficiency and availability of collateral posted outside the United States, as well as any close-out risk if the receiver does not arrange for the transfer of QFC positions.

The Secretary did not receive any comments requesting specific changes to the requirements of Table A–4. Nevertheless, to reduce the burden of Table A–4, the following data fields have been eliminated in the Final Rules: Original face amount of collateral item in U.S. dollars; current end of day market value amount of collateral item in local currency; and collateral code. The Final Rules also eliminate the requirement to describe the scope of collateral segregation.

A collateral posted or received flag has been added to Table A–4 to clearly indicate to the receiver whether the collateral was posted or received by the records entity (A4.3). This field should impose minimal additional burden because a records entity will already need to identify all collateral as posted or received in Table A–2, which requires separate collateral information for collateral posted and collateral received. The Final Rules also adds the data extraction date field (A4.1), as discussed above, to Table A–4 as well as certain other fields necessary to link the data in Table A–4 to the data maintained in one or more of the other data tables or look-up tables (A4.2, A4.4, A4.5).

[117] *See* TCH letter, p. 19; ACLI letter, p. 17.

[118] *See* 12 U.S.C. 5390(c)(9)(A)(i)(IV).

e. Corporate Organization Master Data Lookup Table

In the Proposed Rules, information regarding a records entity's affiliates was required by section 148.4(a)(7) and Tables A–1 and A–2. The Secretary has determined it is appropriate to provide instead for the corporate organization information to be maintained in the new corporate organization master data lookup table, which is cross-referenced with Tables A–1 through A–4. The Final Rules require this information to be maintained by a records entity with respect to itself and all of the members of its corporate group, which includes all of the records entities' affiliates. Although, as discussed above, the definition of ''records entity'' has been revised in the Final Rules to identify which members of a corporate group are records entities by reference to whether they are consolidated under accounting standards, in the event of a Title II resolution, the FDIC would need the information described in the next paragraph for each affiliate, irrespective of consolidation, to allow it to exercise its rights and obligations under, and ensure compliance with, section 210(c)(16) of the Act. As referenced above, under section 210(c)(16) of the Act, the contracts of subsidiaries or affiliates of a covered financial company that are guaranteed or otherwise supported by or linked to such covered financial company can be enforced by the FDIC as receiver of the covered financial company notwithstanding the insolvency, financial condition, or receivership of the financial company if the FDIC transfers the guarantee or other support to a bridge financial company or other third party.[119] The FDIC's decision as to whether to transfer such a guarantee or credit support pursuant to sections 210(c)(9) and (10) of the Act may thus be influenced by the information required to be maintained as to a records entities' affiliates. Information about affiliates of the records entity will also, as discussed below, assist the FDIC with monitoring compliance with the rules.

The information that each records entity will need to maintain with respect to itself and each of its affiliates includes its and its affiliates' identifiers and legal name (CO.2–4), identification of immediate parent (CO.5–CO.7), the immediate parent's percentage ownership (CO.8), the entity type (CO.9), domicile (CO.10), and jurisdiction of incorporation or organization (CO.11). This information will be easier to provide and to update as part of the corporate organization master data lookup table rather than as part of the corporate organization chart provided for under the Proposed Rules. Use of the corporate organization master data lookup table will also facilitate the linking of the data provided in Tables A–1 through A–4 to key information about the records entity and its affiliates.

The corporate organization master data lookup table also includes a recordkeeping status field (CO.12) that was not included in the Proposed Rules. This field, which requires the records entity to identify, with respect to each of its affiliates, whether the affiliate is (i) a records entity, (ii) a non-financial company, (iii) an excluded entity, (iv) a financial company that is not a party to any open QFCs, (v) a records entity that is availing itself of the de minimis exemption, or (vi) a records entity that is availing itself of another exemption, *e.g.*, the conditional exemption for clearing organizations provided under the Final Rules. The information provided in this field will enable the FDIC as receiver to validate that all affiliates that are records entities have provided records to the extent appropriate. For example, if an affiliate has not provided QFC records, the FDIC will be able to ascertain, by reference to this field, whether the affiliate has not provided records because it is not a party to any QFCs, has availed itself of the de minimis exemption, or is not included within the definition of ''records entity.'' The addition of the de minimis exemption in the Final Rules made the need for this field more acute; without this information, the FDIC as receiver will not be alerted to an entity having availed itself of the de minimis exemption such that the FDIC would need to review the QFC documentation of that entity manually. Because each member of a corporate group for which there is a records entity will make its own determination as to whether it is subject to the recordkeeping requirements of the rules, the addition of this field should impose only a minimal burden.

f. Counterparty Master Data Lookup Table

In the Proposed Rules, information regarding a records entity's non-affiliated QFC counterparties was required by section 148.4(a)(6) and in Table A–2. Several commenters suggested that the organizational and affiliate information for counterparties not affiliated with the records entity that would have been required by the Proposed Rules be eliminated or significantly reduced.[120] These commenters stated that the broad definitions of ''affiliate'' and ''control'' would make this a complex and difficult analysis.[121] One commenter noted that most financial companies do not ask for or maintain records on affiliations between counterparties (other than parent-subsidiary relationships) and that these relationships are subject to change, such that even if such information were maintained, the records entity would not be in a position to verify the accuracy of the information.[122]

Having considered the comments received as to the burden of collecting, maintaining, and updating this information, the Secretary has determined that information regarding the identity of the immediate and ultimate parent of each counterparty is sufficient to enable the FDIC as receiver to comply with the requirement, discussed above, that the FDIC either (i) transfer all QFCs between the covered financial company and a counterparty and any affiliate of such counterparty to a single financial institution, (ii) disaffirm or repudiate all such QFCs, or (iii) retain all such QFCs. The data required by the counterparty master data lookup table includes the counterparty identifier (CP.2, which must be the current LEI maintained by the counterparty if the counterparty has obtained an LEI), the legal name of the counterparty (CP.4), domicile of counterparty (CP.5), jurisdiction of incorporation (CP.6), identification of the immediate parent of the counterparty (CP.7–CP.9), and identification of the ultimate parent of the counterparty (CP.10–CP.12).

g. Booking Location Master Data Lookup Table

In the Proposed Rules, the maintenance of information related to the booking location of a QFC position was required under Table A–1. To simplify the tables and facilitate the updating of this information, the Secretary has decided that some of this information should be maintained in a separate table. The information required by the booking location table, which includes the booking location identifier and booking unit or desk identifier, description and contact information, will enable the receiver to determine where the trade is booked and settled and understand the purpose of the position. As noted above, Table A–1 as

[119] 12 U.S.C. 5390(c)(16).

[120] *See* TCH et al. letter, pp. 16–17; SIFMA AMG letter, p. 11.

[121] *Id.*

[122] *See* TCH et al. letter, p. 16.

proposed had also required information pertaining to a point of contact responsible for the position. Based on consideration of comments received, the Secretary determined that this information is not necessary to the FDIC so long as records entities are required to provide current information on the booking location and the booking unit or desk pertaining to QFCs.

h. Safekeeping Agent Master Data Lookup Table

In the Proposed Rules, the maintenance of information relating to the safekeeping agent for collateral securing a QFC position was required by Table A–2. To simplify the tables and facilitate updating this information, the Secretary has decided to maintain the detailed information as to safekeeping agent in a separate table. The data required by this table includes the safekeeping agent identifier, name, and point of contact information (SA.2–SA.7). The information in this table must be capable of being provided with respect to each safekeeping agent for collateral of QFCs of a records entity, whether the safekeeping agent is a third party, the counterparty to the QFC secured by such collateral, or the records entity itself.

III. Administrative Law Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (the ''RFA'') (5 U.S.C. 601 *et seq.*) requires an agency to consider whether the rules it promulgates will have a significant economic impact on a substantial number of small entities. Congress enacted the RFA to address concerns related to the effects of agency rules on small entities, and the Secretary is sensitive to the impact the Final Rules may impose on small entities. The RFA defines a ''small business'' as having the same meaning as ''small business concern'' under section 3 of the Small Business Act,[123] which is defined as an entity that is ''independently owned and operated'' and is ''not dominant in its field of operation.'' [124] In this case, the Secretary believes that the Final Rules likely would not have a ''significant economic impact on a substantial number of small entities.'' The Dodd-Frank Act mandates that the Secretary prescribe regulations requiring financial companies to maintain records with respect to QFCs to assist the FDIC as receiver of a covered financial company in being able to exercise its rights under the Act and to fulfill its obligations under sections 210(c)(8), (9), or (10) of the Dodd-Frank Act. As a result, the economic impact on financial companies, including any impact on small entities, flows directly from the Dodd-Frank Act, and not the Final Rules.

The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. As described in the Proposed Rules, the Secretary, in accordance with section 3(a) of the RFA, reviewed the Proposed Rules and preliminarily concluded that the Proposed Rules likely would not have a significant economic impact on a substantial number of small entities.[125] However, because the Secretary did not have complete data at that time to certify this determination, particularly with regard to affiliated financial companies, an Initial Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 603.

The Secretary certifies, pursuant to 5 U.S.C. 605(b), that the Final Rules will not have a significant economic impact on a substantial number of small entities under the Small Business Administration's (''SBA'') most recently revised standards for small entities, which went into effect on February 26, 2016. As discussed below, the Secretary has made various changes to reduce the scope and burden of the rules. However, even apart from these considerations, the Final Rules are not expected to have a significant economic effect on any small entities because any entities that would be subject to the rules as ''records entities'' that would otherwise meet the standards for small entities would be subsidiaries of large corporate groups and would therefore not be ''independently owned and operated.''

In the Initial Regulatory Flexibility Analysis, the Secretary requested comment on whether the Proposed Rules would have a significant economic impact on a substantial number of small entities and whether the costs are the result of the Act itself, and not the Proposed Rules. Specifically, the Secretary requested that commenters quantify the number of small entities, if any, that would be subject to the Proposed Rules, describe the nature of any impact on small entities, and provide empirical and other data to illustrate and support the number of small entities subject to the Proposed Rules and the extent of any impact.

The Secretary received comments on the Proposed Rules from trade associations, asset managers, insurance companies, clearing organizations, nonprofit organizations, and a private individual. In general, commenters acknowledged the need for the FDIC to have appropriate information in order to exercise its role as a receiver under Title II of the Dodd-Frank Act.[126] However, while commenters also requested various modifications to or relief from aspects of the Proposed Rules that they stated would entail burdens that outweighed the benefits to the FDIC, none provided comments, empirical data, or other analyses in response to the Initial Regulatory Flexibility Analysis or in response to the questions posed by the Secretary regarding the economic impact on small entities.[127] As discussed in detail in section II above, after carefully considering all of the comments received and consulting with the FDIC, Treasury has adopted these Final Rules.

The Proposed Rules, rather than requiring all financial companies to maintain records with respect to QFCs, would have applied to a narrower subset of financial companies. Specifically, the Secretary proposed to exclude from the scope of the Proposed Rules financial companies that did not meet one of the following three criteria: (1) A nonbank financial company subject to a determination by the Council pursuant to section 113 of the Act (12 U.S.C. 5323); (2) a financial market utility designated pursuant to Section 804 of the Act (12 U.S.C. 5463) as, or as likely to become, systemically important; or (3) have total assets equal to or greater than $50 billion. At the time the Proposed Rules were published, each of the financial companies expected to be subject to the rules under these criteria had revenues in excess of the SBA's revised standards for small entities that went into effect on July 22, 2013. The Proposed Rules would also have applied to these large financial companies' affiliated financial companies if an affiliated financial company otherwise qualified as a ''records entity'' and was not an ''exempt entity'' under the Proposed Rules. However, such affiliated financial

[123] *See* 5 U.S.C. 601(3).

[124] *See* 15 U.S.C. 632(a)(1).

[125] *See* 5 U.S.C. 605(b).

[126] *See, e.g.,* Better Markets letter, p. 1; TCH et al. letter, p. 2; DTCC letter, p. 1–2; CEWG letter, p. 2; SIFMA AMG letter, p. 1.

[127] *See, e.g.,* TIAA–CREF letter, p. 1; ACLI letter, p. 9; TCH et al. letter, p. 2. Several commenters also commented on the potential impact of the Proposed Rules on affiliates of a corporate group, though such affiliates were not identified as small entities. *See* discussion under ''Members of Corporate Groups'' in section II.A.1.a above.

companies are not independently owned and operated.

As discussed in section II.A.1 above, the Secretary, in response to comments, determined to make several changes to the definition of ''records entity'' in the Final Rules in order to substantially reduce the number of entities that will be subject to recordkeeping requirements. Further, as discussed in section II.C.3 above, the Secretary determined to include in the Final Rules a de minimis exemption from the preponderance of the recordkeeping requirements for certain records entities that have a minimal level of QFC activity. These changes have the effect of further reducing the likelihood that the rules would affect a substantial number of small entities. In addition, the definition of ''records entity'' has been revised in the Final Rules to refer to members of a corporate group that are consolidated under accounting standards, which should reduce the number of entities that would be included as records entities and ensure that records entities that are members of a corporate group are able to coordinate their compliance with the recordkeeping requirements of the rules. The addition in the Final Rules of the requirement that a top-tier financial company of a corporate group that has multiple records entities must be able to generate a single, compiled set of the records for all records entities in the corporate group that it consolidates or are consolidated with it would not affect the number of small entities that are subject to the rule as no such top-tier financial company would be a small entity.

As discussed above, the Final Rules would only affect large financial companies and certain of their affiliates that meet the definition of a records entity. Previously, the Secretary proposed that the recordkeeping requirements in the Proposed Rules would be applicable to all affiliated financial companies in a large corporate group that meet the definition of ''records entity,'' regardless of their size, because excluding records entities, including small entities, could significantly impair the FDIC's right to enforce certain QFCs of affiliates of covered financial companies under section 210(c)(16) of the Act. The Secretary has been advised by the FDIC that, based on its experience with Part 371, the FDIC as receiver should be able to exercise its statutory rights and duties under the Dodd-Frank Act relating to QFCs without having access to standardized records for any records entity that is a party to 50 or fewer open QFC positions. Thus the Secretary has determined that a de minimis exemption from maintaining the records described in section 148.4 of the Final Rules, other than the records described in section 148.4(i), is appropriate for records entities that have such a minimal level of QFC activity. This change has the effect of further reducing the likelihood that the Final Rules would affect a substantial number of small entities. Although it is unlikely that any small entities would be affected because affiliated members generally do not meet the definition of ''small entity,'' this revision will minimize the burden faced by affiliated members of a corporate group.

Based on current information and discussions with staff of several of the PFRAs who are familiar with financial company operations and have experience supervising financial companies with QFC portfolios, the Secretary believes that the large corporate groups that would be subject to the Final Rules would likely comply with the rules by utilizing a centralized recordkeeping system, whether by adapting an existing system or establishing a new system, that would obviate the need for each member of such corporate group, including small entity members of the corporate group, to maintain its own recordkeeping system in order to comply with the rules. This is expected to have the effect of substantially reducing the burden of compliance with the rules on particular small entity members, if any, of a corporate group subject to the rules. The Secretary requested information and comment in the Initial Regulatory Flexibility Analysis on the role of entities responsible for the centralized recordkeeping systems and whether such entities are small entities to which the Proposed Rules would apply. While several commenters addressed the impact of the Proposed Rules in general on information recordkeeping systems,[128] none specifically addressed the role of entities responsible for such systems and whether any such entities are small entities.

As discussed in more detail above, the Final Rules impose certain recordkeeping requirements on records entities. A records entity is required to maintain all records described in section 148.4 of the Final Rules, be able to generate data in the format set forth in the appendix to the Final Rules, and be capable of transmitting those records electronically to the records entity's PFRA and the FDIC. The Final Rules include recordkeeping requirements with respect to position-level data, counterparty-level data, legal documentation data, collateral detail data, corporate organization data, and a list of vendors directly supporting QFC-related activities of the records entity and the vendors' contact information.

As discussed in the Initial Regulatory Flexibility Analysis, based on discussions with several of the PFRAs that are familiar with financial company operations and have experience supervising financial companies with QFCs portfolios, the Secretary believes that records entities are already maintaining, as part of their ordinary course of business, most of the QFC information required to be maintained under the Final Rules, which minimizes the potential economic impact.[129] However, the Secretary acknowledges that the Final Rules' form and availability requirements may impose additional costs and burdens on records entities.

The Secretary recognizes that there may be particular types of QFCs or counterparties for which more limited information may be sufficient to enable the FDIC to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act. The Final Rules provide the Secretary with the discretion to grant conditional or unconditional exemptions from one or more of the requirements of the Final Rules, which could include exemptions from the recordkeeping requirements regarding particular types of QFCs or counterparties. In addition, section 148.1(d)(3) of the Final Rules provides the Secretary with the authority to grant extensions of time for compliance purposes.

The Secretary requested in the Initial Regulatory Flexibility Analysis information and comment on any costs, compliance requirements, or changes in operating procedures arising from application of the Proposed Rules on small entities.[130] Most commenters offered general comments on the costs of compliance requirements and changes in operating procedures.[131] These comments have been addressed by the Secretary in section II, above. However, none of these commenters quantified the costs of compliance by small entities or otherwise provided

[128] *See* DTCC letter, p. 10; OCC letter, p. 12; TCH et al. letter, pp. 22–23; TIAA letter, p. 2

[129] Registered derivatives clearing organizations and clearing agencies, given the nature of their business, do not currently maintain much of the required records and have been provided a conditional exemption under the Final Rules for the reasons discussed under ''Clearing Organizations'' in section II.A.1.a above.

[130] *See* 80 FR 966, 986.

[131] *See, e.g.,* ACLI letter, pp. 17–19; SIFMA AMG letter, pp. 11–14.

empirical data regarding the costs of compliance by small entities.[132] Moreover, the Secretary received no comments on its discussion of the impact on small entities in the Initial Regulatory Flexibility Analysis. In light of the foregoing and the considerations discussed above, the Secretary certifies the Final Rules will not have a significant economic effect on a substantial number of small entities.

B. Paperwork Reduction Act

Certain provisions of the Final Rules contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The collection of information requirements in the Final Rules have been submitted by the Secretary to the Office of Management and Budget (''OMB'') for review in accordance with the PRA, 44 U.S.C. 3507(d). The title of this collection is ''Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority.'' The collection of information has been assigned OMB Control No. 1505–0256.

Previously, the Secretary requested comments on the collection of information burdens associated with the Proposed Rules. Specifically, the Secretary asked for comment concerning:

(1) Whether the proposed information collection is necessary for the proper performance of agency functions, including whether the information will have practical utility;

(2) The accuracy of the estimated burden associated with the proposed collection of information, including the validity of the methodology and assumptions used;

(3) How to enhance the quality, utility, and clarity of the information required to be maintained;

(4) How to minimize the burden of complying with the proposed information collection, including the application of automated collection techniques or other forms of information technology;

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information; and

(6) Estimates of (i) the number of financial companies subject to the Proposed Rules, (ii) the number of records entities that are parties to an open QFC or guarantee, support, or are linked to an open QFC, and (iii) the number of affiliated financial companies that are parties to an open QFC or guarantee, support, or are linked to an open QFC of an affiliate.

Commenters on the Proposed Rules generally acknowledged the need for the FDIC to have appropriate information in order to exercise its role as a receiver under Title II of the Act. Commenters also requested various modifications to or relief from aspects of the Proposed Rules that they stated would entail burdens that outweighed the benefits to the FDIC. This included recommendations that the records required to be maintained under the Proposed Rules be tailored more narrowly to require only data that is critical to the FDIC's QFC transfer determinations under section 210 of the Act. Several commenters also remarked generally that the Proposed Rules would entail significant information technology and systems development challenges.[133] However, none of the commenters provided comments, empirical data, estimates of costs or benefits, or other analyses directly addressing matters pertaining to the PRA discussion.

The collection of information is required by section 210(c)(8)(H) of the Act, which mandates that the Secretary prescribe regulations requiring financial companies to maintain records with respect to QFCs to assist the FDIC as receiver for a covered financial company in being able to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act. The Final Rules implement these requirements by requiring that a records entity maintain records with respect to, among other things, position-level data, counterparty data, legal agreement data (including copies of agreements governing QFC transactions and open confirmations), collateral detail data, corporate organization information, and a list of vendors directly supporting QFC-related activities of the records entity and the vendors' contact information. The Final Rules require that a records entity be capable of providing QFC records to its PFRA and the FDIC within 24 hours of the request of such PFRA. For corporate groups that have multiple records entities, the top-tier financial company of the corporate group must be able to generate a single, compiled set of the records specified in the Final Rules for all records entities in the corporate group that it consolidates or are consolidated with it and provide such set of records to its PFRA and the FDIC within 24 hours of the request of such PFRA and in a format that allows for aggregation and disaggregation of such data by records entity and counterparty.

The Final Rules also provide that a records entity may request in writing an extension of time with respect to the compliance dates associated with the recordkeeping requirements. The Final Rules further provide that one or more records entities may request in writing an exemption from one or more of the recordkeeping requirements. Finally, the Final Rules provide a de minimis exemption from maintaining the records described in section 148.4 of the Final Rules, other than the records described in section 148.4(i), for a records entity that is a party to 50 or fewer open QFC positions.

Respondents

In the PRA discussion in the Proposed Rules, the Secretary estimated that approximately 140 large corporate groups and each of their respective affiliated financial companies that is a party to an open QFC or guarantees, supports or is linked to an open QFC of an affiliate and is not an ''exempt entity,'' would meet the proposed definition of ''records entity.'' The estimate of 140 large corporate groups includes the four nonbank financial companies subject to a determination by the Council under section 113 of the Dodd-Frank Act and the eight financial market utilities designated by the Council under section 804 of the Dodd-Frank Act as systemically important. The Proposed Rules also included within the definition of ''records entity'' financial companies with assets greater than or equal to $50 billion. The Federal Financial Institutions Examination Council (''FFIEC'') maintains on its public Web site a list of bank holding companies with total assets of greater than $10 billion, which was used to identify bank holding companies with assets greater than or equal to $50 billion. For corporate groups that are not bank holding companies, SNL Financial, a private vendor that provides a subscription-access database that aggregates publicly available financial information on insurance, securities and investment, specialty

[132] One commenter stated that the Secretary's estimate of the cost of initial compliance for most financial groups subject to the rules will, on an individual basis, far exceed the Secretary's estimation of the total industry-wide compliance cost included in the Secretary's Paperwork Reduction Act analysis of the Proposed Rules; however, the commenter did not otherwise offer an estimate of compliance costs or estimate the costs of compliance by small entities specifically. *See* TCH et al. letter, pp. 3–4.

[133] *See* DTCC letter, p. 3, 8–11; OCC letter, p. 12; TCH *et al.* letter, pp. 19, 22; TIAA–CREF letter, p. 2.

finance, and financial technology companies, as well as financial statements filed with the SEC and, for broker-dealers, with the Financial Industry Regulatory Authority, were used to identify corporate groups with assets greater than or equal to $50 billion as of December 31, 2013. By reference to these sources, as well as conversations with the PFRAs, 128 additional corporate groups were estimated to be subject to the rules.

For purposes of the PRA discussion in the Proposed Rules, the Secretary estimated that each large corporate group was comprised of approximately 168 affiliates, resulting in an estimate of 23,325 affiliated financial companies. As noted above, commenters generally did not provide comments, empirical data, or other analyses directly addressing the Secretary's estimates in the PRA discussion. As discussed in detail in section II above, the Final Rules, as adopted, incorporate several changes to the Proposed Rules, including the addition to the definition of ''records entity'' of criteria based on the level of a financial company's derivatives activity, the exclusion of insurance companies, a conditional exemption for derivatives clearing organizations, and the inclusion of a de minimis exemption. Taken together, these changes substantially reduce the scope of financial companies subject to the recordkeeping requirements of the Final Rules.

The Secretary estimates that approximately 30 large corporate groups, and each of their respective affiliated financial companies that is a party to an open QFC and is not an ''excluded entity,'' will meet the definition of ''records entity'' in section 148.2(n) upon the effective date of the Final Rules, compared to the estimate in the Proposed Rules of 140 large corporate groups. The Secretary estimates that collectively these 30 corporate groups had approximately $15 trillion in total assets, compared to an estimated $25 trillion in total assets of the 140 corporate groups that were expected to meet the definition of ''records entity'' in the Proposed Rules. These estimates were based on the publicly disclosed financial statements of such corporate groups as of December 31, 2015 and December 31, 2013, respectively.

The estimate of 30 large corporate groups was calculated as follows. There are three categories of financial companies that are included within the definition of ''records entity'' in the Final Rules without regard to whether they meet the asset or derivatives thresholds. The estimate includes the eight U.S. top-tier bank holding companies currently identified as G–SIBs. Likewise, the estimate includes the two nonbank financial companies currently subject to a determination by the Council under section 113 of the Dodd-Frank Act. There are currently eight financial market utilities designated by the Council under section 804 of the Dodd-Frank Act as systemically important. Six of these entities are registered clearing agencies or derivatives clearing organizations, for which a conditional exemption has been provided under the Final Rules, though their affiliates may be subject to the recordkeeping requirements if they are party to open QFCs.

The estimate also includes large corporate groups that would be subject to the rules by virtue of the amount of their total consolidated assets and level of derivatives activity. For bank holding companies, the FFIEC-maintained list, referenced above, of bank holding companies with total assets of greater than $10 billion was used to identify bank holding companies with assets greater than or equal to $50 billion. The amount of total gross notional derivatives outstanding and the amount of derivatives liabilities of these bank holding companies was obtained by reference to the consolidated financial statements filed with the Federal Reserve by such bank holding companies on the Federal Reserve's Form FR Y–9C, which are publicly available on the Federal Reserve's Web site. For corporate groups that are not bank holding companies, the SNL Financial database referenced above, as well as financial statements filed with the SEC and, for broker-dealers, with the Financial Industry Regulatory Authority were used to identify corporate groups having total assets greater than or equal to $50 billion and having either greater than or equal to $3.5 billion in derivatives liabilities or greater than or equal to $250 billion in total gross notional derivatives outstanding as of December 31, 2015. By reference to these sources, as well as conversations with the PFRAs, twelve additional corporate groups were estimated to be subject to the rules. While the number of corporate groups having total assets greater than or equal to $50 billion was similar to that estimated at the time of the issuance of the Proposed Rules, the addition to the definition of ''records entity'' of criteria based on the level of a financial company's derivatives activity and the exclusion of insurance companies significantly reduced the number of corporate groups estimated to be subject to the rules.

The following table summarizes the calculation of the estimates of the number and aggregate size of large corporate groups subject to the Proposed Rules and the Final Rules.

LARGE CORPORATE GROUPS SUBJECT TO THE RULES

	Proposed rules	Final rules
Subject to a determination that the company shall be subject to Federal Reserve supervision and enhanced prudential standards pursuant to 12 U.S.C. 5323	8	8
Subject to a designation as, or as likely to become, systemically important pursuant to 12 U.S.C. 5463	4	2
Identified as a global systemically important bank holding company pursuant to 12 CFR Part 217	N/A	8
Corporate group (excluding the above) that has, on a consolidated basis, greater than $50 billion in total assets *	128	N/A
Corporate group (excluding the above) that has, on a consolidated basis (1) greater than $50 billion in total assets and (2)(i) total gross notional derivatives outstanding equal to or greater than $250 billion or (ii) derivative liabilities equal to or greater than $3.5 billion *	N/A	12
Total corporate groups	140	30
Aggregate total assets *	** *$25*	** *$15*

* Based on data obtained from FFIEC public Web site; SNL Financial, a private vendor that provides a subscription-access database that aggregates publicly available financial information on insurance, securities and investment, specialty finance, and financial technology companies; financial statements filed with the SEC, Financial Industry Regulatory Authority, and the Federal Reserve; and conversations with the PFRAs.

** Trillion.

The Final Rules would also apply to these large corporate groups' affiliated financial companies (regardless of their size) if an affiliated financial company otherwise qualifies as a ''records entity,'' and is not an ''excluded entity.'' In addition, as referenced above, the Final Rules will also require the top-tier financial company of the corporate group to be capable of generating a single, compiled set of the records specified in the Final Rules for all records entities in the corporate group that it consolidates or are consolidated with it and to be capable of providing such a set of records to its PFRA and the FDIC.

The Secretary estimates that the large corporate groups that will be subject to the rules collectively have 5,010 affiliated financial companies that may qualify as records entities. The Secretary recognizes that, based on a number of factors, the actual total number of respondents may differ significantly from this estimate. One such factor is that there is no information available to determine how many of the affiliated financial companies of a large corporate group are a party to an open QFC and thus would qualify as records entities. At the same time, the inclusion and availability of the de minimis exemption in the Final Rules will have the effect of reducing the number of affiliated financial companies in many corporate groups subject to the recordkeeping requirements. Finally, as previously noted, commenters did not provide requested comments, empirical data, or other analyses directly addressing the Secretary's estimates of the total number of respondents for purposes of the PRA discussion. For the foregoing reasons, the Secretary has concluded it is reasonable to maintain the estimate of affiliates per corporate group used in the PRA discussion in the Proposed Rules and therefore to assume that a total of 5,010 affiliated financial companies would qualify as record entities.

The Secretary's recordkeeping, reporting, data retention, and records generation burden estimates are based on discussions with the PFRAs regarding their prior experience with initial burden estimates for other recordkeeping systems. The Secretary also considered the burden estimates in rulemakings with similar recordkeeping and reporting requirements.[134] As noted above, some commenters stated that certain aspects of the Proposed Rules entailed burdens that outweighed the benefits to the FDIC. Several commenters also provided general comments that the recordkeeping requirements of the Proposed Rules would involve significant information technology and systems development challenges. In general, commenters did not directly address the Secretary's estimates and analysis in the PRA discussion. Nevertheless, the Secretary has taken all comments into consideration and made certain modifications and adjustments to this PRA discussion in the Final Rules to reflect those comments. As discussed in section II above, the Final Rules incorporate numerous changes in response to commenters' concerns, and this PRA discussion reflects those changes.

In order to comply with the Final Rules, each of the large corporate group respondents will need to set up its network infrastructure to collect data in the required format. This will likely impose a one-time initial burden on the large corporate group respondents in connection with the necessary updates to their recordkeeping systems, such as systems development or modifications. This initial burden is mitigated to some extent because QFC data is likely already retained in some form by each large corporate group respondent in the ordinary course of business, but large corporate group respondents may need to amend internal procedures, reprogram systems, reconfigure data tables, and implement compliance processes. Moreover, they may need to standardize the data and create records tables to match the format required by the Final Rules. In recognition of this, as discussed in section II.A.3 above, the Final Rules provide for staggered compliance dates that will provide all records entities with additional time to comply with the recordkeeping requirements. Under the Final Rules, all but the very largest institutions will have at least two years to comply with the rules' requirements.[135]

As discussed above, the Final Rules also apply to affiliated financial companies of the large corporate group respondents. The Final Rules will likely impose a one-time initial burden on the affiliated financial companies in connection with necessary updates to their recordkeeping systems, such as systems development or modifications. These burdens will vary widely among affiliated financial companies. As noted herein and as discussed in section II.C.3 above, the Final Rules provide a de minimis exemption from the recordkeeping and reporting requirements for certain records entities that have a minimal level of QFC activity, which the Secretary believes will significantly reduce the number of affiliated financial companies subject to the recordkeeping and reporting requirements of the Final Rules.

The Secretary believes that the large corporate groups subject to the Final Rules are likely to rely on centralized systems to comply with most of the recordkeeping requirements, as set forth herein, for the QFC activities of all affiliated members of the corporate group. The entity responsible for each large corporate group's centralized system will likely operate and maintain a technology shared services model with the majority of the technology applications, systems, and data shared by the multiple affiliated financial companies within the corporate group. Therefore, the majority of the recordkeeping burden stemming from the Final Rules will be borne by the entity responsible for each large corporate group's centralized systems, while relatively little initial and ongoing recordkeeping burden will be imposed on their affiliated financial companies. The affiliated financial companies will likely have a much lower burden because they can utilize the technology and network infrastructure operated and maintained by the entity responsible for the centralized system at their respective large corporate group. Similarly, the Secretary believes that the affiliated financial companies will rely on the entities responsible for the centralized systems to perform the requirements under section 148.3(a)(1)(ii).

Similarly, the Secretary believes that affiliated financial companies will rely on large corporate group respondents to submit any requests for extensions of time under section 148.1(d)(3) or requests for exemption from one or more requirements of the Final Rules under section 148.3(c)(3).

Estimated Paperwork Burden

Recordkeeping

Estimated number of respondents

Estimated number of large corporate groups: 30.

Estimated number of affiliated financial companies: 5,010.

Total estimated initial recordkeeping burden

Estimated average initial burden hours per respondent: 7,200 hours for large corporate groups, 0.5 hours for affiliated financial companies.

[134] *See* 80 FR 14563 (Mar. 19, 2015); 77 FR 2136 (Jan. 13, 2012); 76 FR 46960 (Aug. 3, 2011); 76 FR 43851 (July 22, 2011); 73 FR 78162 (Dec. 22, 2008).

[135] All records entities and top-tier financial companies will be required to provide point of contact information to their PFRAs and the FDIC on the effective date of the rules.

Estimated frequency: One-time, spread over applicable compliance period.

Estimated total initial recordkeeping burden: 216,000 hours for large corporate groups and 2,505 hours for affiliated financial companies.

Total estimated annual recordkeeping burden

Estimated average annual burden hours per respondent: 240 hours for large corporate groups, 0.5 hours for affiliated financial companies.

Estimated frequency: Annually.

Estimated total annual recordkeeping burden: 7,200 hours per year for large corporate groups and 2,505 hours per year for affiliated financial companies.

The initial and annual recordkeeping burden is imposed by the Dodd-Frank Act, which requires that the Secretary prescribe regulations requiring financial companies to maintain records with respect to QFCs to assist the FDIC as receiver of a covered financial company in being able to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act.

Reporting

Estimated number of respondents: 30.

Total estimated annual reporting burden

Estimated average annual burden hours per respondent: 50 hours.

Estimated frequency: Annually.

Estimated total annual reporting burden: 1,500 hours per year.

As discussed in more detail in section III.C.6.a below, the Secretary estimates the potential total costs of the initial recordkeeping burden associated with the Final Rules, including the burden hours estimated above plus estimated technology and systems development and modification costs, to be $36,631,995. The potential total costs of annual recordkeeping and reporting burdens associated with the Final Rules, including the burden hours estimated above, are estimated to be $1,248,795.[136]

C. Executive Orders 12866 and 13563

It has been determined that the Final Rules are a significant regulation as defined in section 3(f)(1) of Executive Order 12866, as amended. Accordingly, the Final Rules have been reviewed by OMB. The Regulatory Assessment prepared by the Secretary for the Final Rules is provided below.

1. Description of the Need for the Regulatory Action

The rulemaking is required by the Dodd-Frank Act to implement the QFC recordkeeping requirements of section 210(c)(8)(H) of the Act. Section 210(c)(8)(H) generally provides that if the PFRAs do not prescribe joint final or interim final regulations requiring financial companies to maintain records with respect to QFCs within 24 months from the date of enactment of the Act, the Chairperson of the Council shall prescribe such regulations in consultation with the FDIC. The Secretary, as Chairperson of the Council, is adopting the Final Rules in consultation with the FDIC because the PFRAs did not prescribe such joint final or interim final regulations. The recordkeeping required in the Final Rules is necessary and appropriate to assist the FDIC as receiver to exercise its rights and fulfill its obligations under sections 210(c)(8), (9), and (10) of the Dodd-Frank Act, by enabling it to assess the consequences of decisions to transfer, disaffirm or repudiate, or allow the termination of QFCs with one or more counterparties.

The recent financial crisis has demonstrated that management of QFC positions, including steps undertaken to close out such positions, can be an important element of a resolution strategy which, if not handled properly, may magnify market instability. Large, interconnected financial companies may hold very large positions in QFCs involving numerous counterparties. A disorderly unwinding of these QFCs, including the mass exercise of QFC default rights and the rapid liquidation of collateral, could cause severe negative consequences for not only the counterparties themselves but also U.S. financial stability. A disorderly unwind could result in rapid liquidations, or ''fire sales,'' of large volumes of financial assets, such as the collateral that secures the contracts, which can in turn weaken and cause stress for other firms by lowering the value of similar assets that they hold or have pledged as collateral to other counterparties.

In order for the FDIC to effectuate an orderly liquidation of a covered financial company under Title II, the FDIC would need to make appropriate decisions regarding whether to transfer QFCs to a bridge financial company or other solvent financial institution or leave QFCs of the covered financial company in receivership. Determining whether to transfer QFCs in a manner that complies with the requirements of Title II and ensuring continued performance on any QFCs transferred requires detailed and standardized records. It would not be possible for the FDIC to fully analyze a large amount of QFC information in the short time frame afforded by Title II unless such information is readily available to the FDIC in a standardized format designed to enable the FDIC to conduct the analysis in an expeditious manner.

As referenced in section I above, Title II requires the FDIC as receiver to exercise its authorities, to the greatest extent practicable, in a manner that maximizes value, minimizes losses, and mitigates the potential for serious adverse effects to the financial system. Title II also requires that the aggregate amount of liabilities of a covered financial company that are transferred to a bridge financial company from a covered financial company not exceed the aggregate amount of the assets of the covered financial company that are transferred to the bridge financial company from the covered financial company. If it does not have the records required by the rules, the FDIC may be unable to assess the financial position associated with certain QFCs and thus may not be able to determine how the transfers would affect the financial viability of a bridge financial company or other transferee institution, how the transfers would affect financial stability, whether the transfers would serve to maximize value and minimize losses in the disposition of assets of the receivership, and whether the transfers would cause the amount of aggregate transferred liabilities of the bridge financial company to exceed the amount of aggregate transferred assets.

Furthermore, as discussed in sections I and II above, if the FDIC as receiver decides to transfer any QFC with a particular counterparty, Title II requires that it must transfer all QFCs between the covered financial company and such counterparty and any affiliate of such counterparty to a single financial institution, and if the FDIC as receiver decides to disaffirm or repudiate any QFC with a particular counterparty, it must disaffirm or repudiate all QFCs between the covered financial company and such counterparty and any affiliate of such counterparty. If the FDIC were to lack information about the affiliates of the counterparties to the QFCs of the covered financial company, it might not be able to transfer the QFCs given its uncertainty as to whether such a transfer would violate this requirement.

The FDIC's inability to effect the transfer of QFCs for any of the above reasons could have significant adverse effects on financial stability in circumstances in which transferring such QFCs may have prevented the unnecessary termination of QFCs and fire sales of collateral securing these QFCs. Even after a transfer decision is made, the records required by the rule are necessary to ensure that the bridge

[136] All cost and wage estimates are in nominal dollars and have not been adjusted for inflation.

financial company and its subsidiaries continue to perform their obligations on any QFCs that are transferred. The inadvertent failure to perform their obligations under the QFCs, including meeting margin requirements and other obligations, could result in counterparties terminating QFCs, asset fire sales, and the failure of the bridge financial company.

2. Literature Review

In assessing the need for these recordkeeping requirements, we have reviewed two categories of academic literature. As highlighted above, one of the potential channels through which the disorderly unwinding of QFCs could cause severe negative consequences for both the counterparties themselves and U.S. financial stability is through the rapid liquidation of collateral. The disorderly failure of a financial company with a large QFC portfolio may lead QFC counterparties to exercise their contractual remedies and rights by closing out positions and liquidating collateral, while also potentially increasing uncertainty in both derivatives and asset markets. This could lead to lower asset prices, decrease the availability of funding, and increase the likelihood that other financial companies also are forced to liquidate assets. To assess the potential impact of rapid liquidations, we have reviewed economic studies of fire sales among financial companies. Second, while there is limited academic literature specifically focused on the cost of a disorderly unwinding of a large, complex financial company's QFC portfolio, there has been recent literature analyzing the cost of the Lehman Brothers bankruptcy in 2008, which may be illustrative of the potential costs.[137]

a. Fire Sales Among Financial Institutions

The economic literature on financial company fire sales offers insight into their potential internal and external impacts. While not directly addressing QFCs, the fire sale literature can be applied to the potential impact of the rapid liquidation of QFC collateral that might occur in a disorderly unwinding of a large QFC portfolio. As noted above, the recordkeeping required by the Final Rules is necessary to assist the FDIC in being able to make decisions regarding whether to transfer QFCs of a covered financial company to a bridge financial company or other solvent financial institution or to retain the QFCs in the covered financial company in receivership. Transferring QFCs, if appropriate, may prevent the mass exercise of QFC default rights and a corresponding fire sale of assets held as collateral for those QFCs.

Principles of Fire Sales among Financial Companies. According to the literature, a fire sale can occur when a company cannot pay its creditors without selling assets. During a fire sale, assets sold may be heavily discounted below their fundamental values, depending on the market of participating buyers. If buyers are other investors in the asset class or classes being sold (''specialists''), prices may decline little. However, if the fire sale occurs during a financial crisis when uncertainty is higher and many specialists, including financial companies, may be constrained by solvency or liquidity pressures, they may not participate in the other side of the market. As a result, prices may fall substantially, to a level at which buyers who would only buy the assets in question at a large discount enter the market. Low sale prices may cause other financial companies to reduce the value at which they hold similar assets on their books when marking to market, which may trigger a downward spiral marked by more firms in distress (Shleifer and Vishny, 2011).[138] In addition, because many financial companies rely upon short-term sources of financing, such as repurchase agreements, the falling asset prices and heightened uncertainty may contribute to liquidity pressures as these financing sources withdraw funding or demand more collateral. This may force even solvent financial companies to sell assets in order to deleverage, decrease the size of their balance sheets, and reduce risk. This self-reinforcing cycle can result in additional fire sales, and eventually, precipitate or magnify a financial crisis.

Shleifer and Vishny (2011) believe that before the September 2008 Lehman Brothers bankruptcy many specialist buyers, including most financial companies, were active in the market, but after the Lehman bankruptcy most of them were unwilling to buy assets, causing security prices to plunge, and prompting fund withdrawals, collateral calls, and self-reinforcing fire sales. This cycle of price collapses and deleveraging increased the fragility of the financial system, and disrupted financial intermediation.

At the time of a fire sale both seller and non-seller financial companies may curtail their lending, thereby imposing additional social costs associated with reduced financial intermediation. Shleifer and Vishny (2010)[139] use a three-period model of bank lending to illustrate the dynamics. They show that, in normal times, securitization can lead to higher lending volumes and earnings, but market sentiment shocks can quickly reverse these outcomes. When banks are highly leveraged, they may be more vulnerable to unanticipated shocks. A severe shock can lead them to liquidate assets in fire sales, fostering industry-wide asset price declines and weakening the banking system. In that environment, banks may forego lending, both to meet capital requirements and to preserve the capacity to purchase deeply discounted assets in the future. This credit contraction may reduce economic welfare due to a large number of potentially profitable investments that do not receive financing. He *et al.* (2010)[140] and Ivashina and Scharfstein (2010)[141] offer evidence that financial companies used spare balance sheet capacity to purchase discounted securities after the financial crisis rather than to increase lending. Hence, foregone lending during a crisis is a potential social cost.

Empirical Estimates of the Economic Effects of Fire Sales. The literature provides empirical estimates of the economic effects of asset fire sales. Research suggests both the potential direct price discount effect and the indirect spillover effects of fire sales are economically substantial. Although this body of work does not necessarily target financial companies, it provides broadly applicable insights.

Coval and Stafford (2007)[142] compare stock transactions by mutual funds under normal conditions and fire sale conditions from 1980–2004. The study regards high volumes of concurrent capital outflows from mutual funds as creating stock fire sale conditions when they force several funds to sell substantial amounts of underlying stock (the same stocks may be sold by multiple investment funds that are

[137] Lehman Brothers Holdings, Inc. (''Lehman Brothers''), Lehman Brothers Inc. (the U.S. registered broker-dealer), and Lehman Brothers International (Europe) (the UK registered broker-dealer) were subject to separate liquidation proceedings.

[138] Shleifer, A, and Vishny, R. (2011). Fire Sales in Finance and Macroeconomics. Journal of Economic Perspectives 25: 29–48.

[139] Shleifer, A. and Vishny, R. (2010). Asset Fire Sales and Credit Easing. National Bureau of Economic Research working paper 15652.

[140] He, Z., Khang, I.G., and Krishnamurthy, A. (2010). Balance Sheet Adjustments During the 2008 Crisis. IMF Economic Review 58: 118–156.

[141] Ivashina, V. and Scharfstein, D. (2010). Bank Lending During the Financial Crisis of 2008. Journal of Financial Economics 97: 319–338.

[142] Coval, J. and Stafford, E. (2007). ''Asset Fire Sales (and Purchases) in Equity Markets.'' Journal of Financial Economics 86: 479–512.

experiencing similar stresses). It finds a negative 7.9 percent average abnormal stock return in the two quarters preceding and including the distressed selling of a stock by mutual funds. This stock price dip tends to rebound after the high sales volumes dissipate, which the authors point out is consistent with fire sale dynamics, as liquidity providers earn abnormal positive returns after a crisis period and stock prices revert to reflect their fundamental values.

Dinc, Erel, and Liao (2015) [143] find industry-adjusted distressed asset sale discounts of 8 to 9 percent when a firm buys equity shares of target firms in distressed industries in the 2000–12 period. The model controls for target firm size, liquidity, leverage, and profitability, and results are robust to alternative definitions of distressed firms, analytic periods, and industry classifications. The authors consider the estimated discounts to be a lower-bound for fire sale discounts in less liquid assets than equities, such as real assets or debt securities, which may be more difficult to sell during periods of distress.

While ample research documents the costs of fire sales to distressed firms selling assets, little analytic emphasis has been placed on the effect of fire sales on asset buyers. A recent study by Meier and Servaes (2015) [144] examines the direct effects of fire sale purchases on the stock returns of the acquiring firms. Using data for 1982–2012, their model finds abnormal stock price increases of roughly 2 percent among firms buying assets or entire companies under fire sale conditions, compared to purchasing during normal economic conditions.[145] The result is robust to model specifications with alternative control variables, and buyer returns are inversely associated with the level of liquidity in the market and the potential for alternative uses for the assets. The authors conclude that when the gains to firms buying assets during fire sales are included in the estimates, the welfare costs of fire sales may be lower than previously expected. However, the study does not consider the negative spillover effects of fire sales that may infect other firms in the seller's industry, and is not intended to be a full welfare analysis.

In contrast to studies of the direct discounts or stock returns associated with asset transactions during fire sales, Duarte and Eisenbach (2015) [146] assess the indirect spillover costs of fire sales. They develop a model to assess vulnerability to fire sale spillovers, and find substantial negative economic effects. Based on several assumptions developed by the authors, the model estimates that from July 2008 to March 2014, an exogenous 1 percent decline in the price of assets financed with repos leads to average fire sale losses of 8 percent of total equity capital in the broker-dealer sector. The authors conclude that asset fire sale spillovers are an important part of overall risk to the financial system.

Potential Effects on Lending. As predicted by the theoretical models discussed above, empirical research shows bank lending declined sharply during the crisis. Ivashina and Scharfstein (2010) show that in August through December 2008, banks that depended more heavily on short-term debt (other than insured deposits), reduced their business lending by significantly more than banks less dependent on short-term debt financing. At the time of the Lehman bankruptcy, the paper identifies two channels driving this result that collectively constituted a ''run'' on financial companies. First, short-term creditors refused to roll over their unsecured commercial paper loans and repo lenders increased collateral requirements, which particularly constrained financial companies dependent on short-term credit for a significant share of their financing. Second, borrowers substantially increased draws on their existing credit lines ''to enhance their liquidity and financial flexibility during the credit crisis.'' In particular, financial companies that co-syndicated credit lines with Lehman Brothers were more likely to experience larger credit line drawdowns after the Lehman failure, and reduced their new lending more than those without co-syndication relationships with Lehman. Ivashina and Scharfstein conclude the results are consistent with a decline in the supply of funding as a result of the run associated with the Lehman event.

On the borrower side, Campello *et al.* (2010) [147] surveyed the chief financial officers of 1,050 nonfinancial firms in the United States, Europe, and Asia and found that those that identified their firms as ''financially constrained'' [148] during the financial crisis cut back more on capital and technology investments compared to those that identified their firms as ''financially unconstrained.'' They also cut marketing expenditures by significantly greater margins, and shed far more employees (financially constrained firms planned to cut 10.9 percent of their personnel in 2009, while financially unconstrained firms planned to shed 2.7 percent). The survey revealed that during the crisis, 86 percent of constrained firms reported foregoing attractive investments, compared to 44 percent of unconstrained firms. This suggests the crisis-related decline in bank credit supply directly contributed to the reduction in constrained firms' investments, and imposed associated economic effects.

b. Costs of Lehman Brothers Bankruptcy

Numerous researchers have provided broad estimates of the economic costs of the 2007–09 financial crisis (see GAO (2013) [149] for a useful review). This section focuses more narrowly on the terminations of derivative contracts associated with the Lehman bankruptcy to help illustrate the potential costs of unwinding the derivatives portfolio of a large, complex financial company. While this particular example occurred under the U.S. Bankruptcy Code rather than as a Title II orderly liquidation, the disorderly unwind and disruptions that resulted are indicative of the potential negative consequences that could result from a situation in which the FDIC as receiver in a Title II resolution is unable to make informed decisions as to whether to transfer a QFC because it does not have adequate records.

The net worth of Lehman Brothers derivative positions at the time of bankruptcy on September 15, 2008 totaled $21 billion, with 96 percent representing over-the-counter (OTC) positions.[150] The portfolio consisted of more than 6,000 OTC derivative

[143] Dinc, S., Erel I., and Liao, R. (2015). ''Fire Sale Discount: Evidence from the Sale of Minority Equity Stakes.'' Ohio State University Fisher College of Business working paper 2015–03–11.

[144] Meier, J.A. and Servaes, H. (2015). ''The Bright Side of Fire Sales.'' London Business School working paper.

[145] The model uses an event study approach to study a three-day period starting one day before the transaction announcement.

[146] Duarte, F. and Eisenbach, T.M. (2015). ''Fire Sale Spillovers and Systemic Risk.'' Federal Reserve Bank of New York Staff Reports, No. 645.

[147] Campello, M., Graham, J., and Harvey, C. (2010). The Real Effects of Financial Constraints: Evidence from a Financial Crisis. Journal of Financial Economics 97: 470–487.

[148] Derived from survey respondents' self-assessments of their financial condition.

[149] Government Accountability Office, Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act, GAO–13–180 (January 16, 2013).

[150] Most derivatives were held in several subsidiaries specializing in derivatives and related instruments. Since Lehman had numerous subsidiaries with intermingled interests, we simplify the discussion by describing them as if they were a single entity, except when specificity is necessary for descriptive accuracy.

contracts involving over 900,000 transactions. Fleming and Sarkar's (2014) [151] detailed assessment of the Lehman Brothers bankruptcy finds the overall recovery rate of all allowed unsecured claims (not limited to QFCs) amounted to roughly 28 percent, a rate the authors describe as low relative to both an estimated 59 percent for other financial company failures and 40 percent for failures occurring in recessions.

We use a framework that divides costs associated with derivatives resolution into private costs and public (external) costs. Private costs consist of direct losses to derivatives counterparties from unrecovered claims, indirect costs to derivatives counterparties from loss of hedged positions, costs to other Lehman Brothers creditors in the bankruptcy proceeding due to reductions in recovery values resulting from the termination and settlement of OTC derivatives, losses to the Lehman estate from excess collateral transfers during bulk sales of exchange-traded derivatives, and litigation and administrative expenses. While we find no literature that assesses the public costs directly attributable to the resolution of Lehman's derivatives portfolio, below we examine the literature assessing the public impact of Lehman's failure more broadly.

While rigorous estimates of the value of each cost element listed above would be ideal, in reality we are constrained by a lack of publicly available data. Therefore, this section combines qualitative descriptions of costs with limited quantitative information when available, in an effort to provide insight on the costs of resolving Lehman's QFC portfolio under the bankruptcy proceedings.

Private Derivatives Counterparty Costs: Unrecovered Claims. Estimates of bankruptcy claim recovery rates of OTC derivative counterparties (excluding Lehman affiliate claims) are reported in the literature at the Lehman subsidiary level, and vary widely, ranging from 31 percent for Lehman Brothers Special Financing (the largest Lehman derivatives entity) to 100 percent each for Lehman Brothers OTC Derivatives, Lehman Brothers Derivatives Products, and Lehman Brothers Financial Products, as of March 27, 2014 (Fleming and Sarkar (2014)). Still the authors emphasize that, ''many counterparties of Lehman's OTC derivatives suffered substantial losses.''

Private Derivatives Counterparty Costs: Loss of Hedged Positions. A key reason for many counterparties to acquire derivative positions is to hedge against potential future market developments. These hedges reduce uncertainties and serve as valuable risk management instruments. Fleming and Sarkar (2014) suggest Lehman's abrupt bankruptcy took counterparties by surprise, and allowed them little time to assess their derivative positions facing Lehman, decide whether to terminate contracts, and rehedge their positions as needed.[152] Therefore, many counterparties lost their hedged positions within a brief period and were unexpectedly exposed to risks until new positions could be established. We find no estimates of the costs of these lost hedges in the literature.

Private Costs to the Entire Lehman Bankruptcy Estate: Settlement of OTC Derivatives. Fleming and Sarkar (2014) note that the settlement of Lehman's OTC derivatives claims may have also resulted in significant losses to the Lehman bankruptcy estate. Derivatives valuation claims are generally based on replacement costs and they note that due to the large prevailing bid-ask spreads at the time of Lehman's bankruptcy filing, replacement costs may have diverged significantly from fair value. During the settlement process the Lehman estate received $11.85 billion in OTC derivatives receivables by January 10, 2011. It is unclear how much in additional receivables may have been ''lost'' by Lehman due to the termination and settlement of contracts following its bankruptcy filing. The literature notes that the relatively abrupt timing of the bankruptcy filing may have also influenced the magnitude of losses. Valukas (2010) suggested that Lehman insufficiently planned for the possibility of bankruptcy, such that management only began to plan seriously for bankruptcy a few days before the bankruptcy filing. A bankruptcy court document [153] cites a ''turnaround specialist'' advising Lehman, Bryan Marsal, as telling the court-appointed examiner that the sudden bankruptcy resulted in the loss of 70 percent of $48 billion of receivables from derivatives that could have been unwound. Yet, the same document notes that Lehman counsel Harvey Miller did not think the rushed filing had an adverse impact on the estate (Valukas 2010). These accounts appear anecdotal and no information is provided on the derivation of the figures cited by Marsal.

Private Costs to the Entire Lehman Bankruptcy Estate: Settlement of Exchange-traded Derivatives. Wiggins and Metrick (2015) [154] report that three days following the Lehman bankruptcy filing, the derivatives exchange holding its accounts sold them through a bulk auction to three buyer entities, who assumed the positions taken in the derivatives contracts. The transactions included transfer of $2 billion in Lehman collateral and clearing deposits to the buyers, which exceeded the market value of the obligations by roughly $1.2 billion. This excess collateral value was considered a loss to Lehman by the bankruptcy examiner.

Private Costs: Litigation and Administrative. The extended duration of the OTC derivatives settlement process included multiple court petitions, procedure approvals, settlement mechanisms, and legal challenges. While 81 percent of derivative contracts in claims against Lehman were terminated by November 13, 2008, the final settlement process moved more deliberately due to the multiple steps involved in properly addressing the unprecedented scale and complexity of claims within the bankruptcy process. Only 84 percent of derivatives claims had been settled by the end of 2012. Estimates of litigation and administrative expenses for OTC derivatives alone are not available, but these expense categories for the full Lehman settlement process were estimated to total $3.2 billion as of May 13, 2011 (Fleming and Sarkar (2014)).

Public Costs: Externalities. The event study is a common method of estimating the market impact of a particular event. Measured market reactions to the Lehman bankruptcy are based on the institution's failure event as a whole; they are not reactions to the QFC resolution process alone and therefore overstate the impacts of these terminations. We may plausibly assume, however, that the market reactions to the overall Lehman collapse

[151] Fleming, M. and Sarkar, A. (2014). The Failure Resolution of Lehman Brothers. Economic Policy Review 20(2). Federal Reserve Bank of New York.

[152] Fleming and Sarkar believe the selection of the termination date for safe harbor purposes influenced this. They write (p. 25), ''Although Lehman filed for bankruptcy protection at about 1:00 a.m. on Monday, September 15, 2008, the termination date was set as Friday, September 12 for derivatives subject to automatic termination. Normally, nondefaulting derivatives counterparties of Lehman would have attempted to hedge their positions on Monday to mitigate expected losses on their position. However, they could not do so since their positions were deemed to have terminated two days earlier.''

[153] Valukas, A. (2010). ''Report of the Examiner in the Chapter 11 Proceedings of Lehman Brothers Holdings Inc.'' March 11. Accessed at: *http://jenner.com/lehman/.*

[154] Wiggins, R.Z. and Metrick, A. (2015). ''The Lehman Brothers Bankruptcy G: The Special Case of Derivatives.'' Yale Program on Financial Stability Case Study 2014–3G–V1.

announcement included a component associated with potential costs of settling their derivative contracts.[155]

Johnson and Mamun (2012)[156] apply an event study approach to assess stock market reactions of a sample of 742 U.S. financial institutions—divided into banks, savings and loans, brokers, and primary dealers—on the date of the Lehman bankruptcy filing. While each group of institutions showed negative abnormal returns, only the bank (−3 percent) and primary dealer (−6 percent) coefficients were statistically significant. The data strongly support the notion that the event had differential impacts by type of financial institution and abnormal returns across institution groups.

Dumontaux and Pop (2012)[157] apply a similar approach to assess stock market reactions of a sample of 382 U.S. financial companies, using brief event windows. They report heterogeneous outcomes according to institution size and business lines. Among the twenty large companies[158] (excluding Lehman Brothers), cumulative abnormal stock price returns were highly significantly negative, ranging from −10 percent to −18 percent over five distinct event windows of up to five days in duration. However, the effects on the full sample were not statistically significant, indicating the immediate contagion effect was limited to large companies. The results of both event studies suggest the Lehman bankruptcy likely imparted immediate negative external effects on a subset of financial companies, causing substantial drops in their market valuations. However, as noted above, it is not clear from these studies the extent to which the change in company valuation is driven by the costs of the QFC resolution process. We did not find event studies specifically assessing market impacts on non-financial firms.

Domestic Public Support: Federal Reserve Facility. The Federal Reserve provided substantial liquidity to the markets during the 2007–2009 period. Fleming and Sarkar (2014) consider the support to Lehman in the first week after the bankruptcy as a critical factor in the recovery of claims against at least part of Lehman Brothers, which allowed it to keep operating until it was acquired by Barclays. Between September 15 and 18, 2008, Lehman Brothers Inc. borrowed $68 billion from the Primary Dealer Credit Facility (''PDCF''). Because the borrowed funds were fully collateralized and repaid in full with interest, the Congressional Budget Office (2010)[159] estimated that total lending through the PDCF involved a negligible subsidy value.

Global Public Costs: Externalities. The economic literature is rich with event studies of market reactions to policy announcements designed to alleviate the financial crisis, however, we find no studies focusing directly on the global market impacts of the Lehman Brothers bankruptcy as an event. We also acknowledge global spillovers as a potential public cost; however, we find no studies focusing directly on the global impacts of the Lehman Brothers bankruptcy as an event.

c. Conclusion

The economic literature on financial asset fire sales maintains that such events are more systemically harmful when occurring during industry-wide periods of distress, making mitigating these costs a public policy concern. The Lehman Brothers bankruptcy and the resulting QFC terminations occurred during a crisis period, and might have imposed widespread private and public costs. We do not compare the Lehman bankruptcy costs to the alternative of potential resolution costs under a counterfactual case had Title II of the Dodd-Frank Act been in effect at the time of the Lehman bankruptcy filing. Nonetheless, Fleming and Sarkar (2014) argue that, ''some of the losses associated with the failure of Lehman Brothers may have been avoided in a more orderly liquidation process.''

3. Baseline

The FDIC promulgated 12 CFR part 371, Recordkeeping Requirements for Qualified Financial Contracts (''Part 371''), pursuant to section 11(e)(8)(H) of the FDIA.[160] The FDIC's QFC recordkeeping rule, which applies to insured depository institutions that are in a troubled condition, was promulgated to enable the FDIC as receiver to make an informed decision as to whether to transfer or retain QFCs and thereby reduce losses to the deposit insurance fund and minimize the potential for market disruptions that could occur with respect to the liquidation of QFC portfolios of insured depository institutions. The recordkeeping requirements of the Final Rules, which do not apply to insured depository institutions, are based, in part, on Part 371. However, the information requirements of the Final Rules are more extensive, reflecting the FDIC's experience with portfolios of QFCs of insured depository institutions subject to Part 371.

Based on discussions with the staff of the PFRAs who are familiar with financial company operations and have experience supervising financial companies with QFC portfolios, the Secretary believes that the large corporate groups that would be subject to the Final Rules should already be maintaining much of the QFC information required to be maintained under the Final Rules as part of their ordinary course of business. In order for these large corporate groups to effectively manage their QFC portfolios, they need to have robust recordkeeping systems in place; for example, large corporate groups that trade derivatives out of several distinct legal entities need to have detailed records, including counterparty identification, position-level data, collateral received and posted, and contractual requirements, in order to effectively manage their portfolio, perform on contracts, and monitor risks. As noted by commenters, regulated financial companies must maintain extensive QFC records pursuant to other regulatory requirements.[161] However, the Secretary understands that these large corporate groups are not currently maintaining the QFC records in the standardized format prescribed by the Final Rules and as set forth in the appendix to the Final Rules such that they may have to modify existing recordkeeping systems with respect to QFCs or build new systems in order to comply with the rules.

4. Evaluation of Alternatives

The Secretary considered alternatives to implementing the recordkeeping requirements of the Final Rules but believes that the adopted form is the best available method of achieving both the statutory mandate and the regulatory objectives. The assessment of alternatives below is organized into three subcategories: The scope of the rules; the content of records; and standardized recordkeeping.

[155] Still, we caution that event study results may produce ''noisy'' signals. For example, attribution is problematic as the period surrounding the Lehman collapse was a particularly active one with nearly two dozen significant economic events in September 2008.

[156] Johnson, M.A. and Mamun, A. (2012). The Failure of Lehman Brothers and its Impact on Other Financial Institutions. Applied Financial Economics 22: 375–385.

[157] Dumontaux, N. and Pop, A. (2012). ''Contagion Effects in the Aftermath of Lehman's Collapse: Measuring the Collateral Damage.'' University of Nantes working paper 2012/27.

[158] Large financial companies are defined as those with total assets over $1 billion in their last audited report before the event date.

[159] Congressional Budget Office. (2010). The Budgetary Impact and Subsidy Costs of the Federal Reserve's Actions During the Financial Crisis.

[160] 12 U.S.C. 1821(e)(8)(H).

[161] *See* SIFMA AMG letter, pp. 12–13; ACLI letter, pp. 20–21.

a. Scope of the Final Rules

The scope of the Final Rules and the reasons for the changes made to the scope of the rules as compared to the Proposed Rules is provided in section II.A.1, above. The Secretary considered alternative criteria in developing the definition of a records entity, such as including financial companies that have more than $10 billion in assets. This threshold, which would have captured more financial companies that potentially might be considered for orderly liquidation under Title II, has been used in other regulatory requirements. For example, the Dodd-Frank Act requires certain financial companies with more than $10 billion in total consolidated assets to conduct annual stress tests.[162] Additionally, the CFTC's final rule on the end-user exemption to the clearing requirement for swaps exempts banks, savings associations, farm credit system institutions, and credit unions with total assets of $10 billion or less from the definition of ''financial entity,'' making such ''smaller'' financial institutions eligible for the end-user exception.[163]

However, the Secretary determined that while it is possible that financial companies with more than $10 billion and less than $50 billion in total assets would be considered for orderly liquidation under Title II, a more appropriate threshold is the $50 billion in total consolidated assets, supplemented by the secondary thresholds of $250 billion of total gross notional derivatives outstanding or $3.5 billion of derivative liabilities. Imposing the $50 billion total assets threshold by itself or including all financial companies with over $10 billion in total assets would substantially increase the number of financial companies subject to recordkeeping requirements, many of which would likely not be considered for orderly liquidation under Title II. Financial companies with total assets of $50 billion or more and with a substantial degree of activity in QFCs as indicated by total gross notional derivatives outstanding of at least $250 billion or derivative liabilities of at least $3.5 billion, potentially would be among the most likely to be considered for orderly liquidation under Title II. The definition of ''records entity'' in the Final Rules is thus designed to reduce recordkeeping burdens on smaller financial company groups by only capturing those financial companies that are part of a group with a member that it is the type of company for which the FDIC is most likely to be appointed as receiver.

b. Content of Records

The Secretary determined, after consulting with the FDIC, that requiring each records entity to maintain the data included in Tables A–1 through A–4 and the four master data lookup tables of the appendix to the Final Rules is necessary to assist the FDIC in being able to effectively exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act. To facilitate the resolution of QFC portfolios, the FDIC, upon being appointed as receiver for a covered financial company under Title II, would need to analyze such data in order to promptly effectuate decisions. The information must be sufficient to allow the FDIC to estimate the financial and operational impact on the covered financial company and its counterparties, affiliated financial companies, and the financial markets as a whole of the FDIC's decision to transfer, retain and disaffirm or repudiate, or retain and allow the counterparty to terminate the covered financial company's QFCs. It must also allow the FDIC to assess the potential impact that such decisions may have on the financial markets as a whole, which may inform its transfer decisions. The need for the information specified by each table is discussed in further detail in section II.D.2 above.

As indicated above, the recordkeeping requirements of the Final Rules are similar to the FDIC's Part 371, rules applicable to insured depository institutions in troubled condition but the information requirements of the Final Rules (which do not apply to insured depository institutions) are more extensive. Previously, in developing the Proposed Rules, the Secretary considered the appropriateness of reducing the recordkeeping burden by aligning the requirements more closely with those of the FDIC's Part 371, but determined, in consultation with the FDIC, that additional recordkeeping beyond that required by Part 371 would be needed for the FDIC to resolve a financial company with significant QFC positions under Title II. The Secretary reaffirms in the Final Rules that this determination is appropriate and that, in a Title II resolution scenario, the FDIC will need the additional information required by the Final Rules to analyze the QFC portfolio, decide how to manage the QFCs, and perform their obligations under the QFCs, including meeting collateral requirements. Furthermore, although applying the Part 371 requirements to records entities instead of the requirements of the Final Rules would have imposed less of a burden on records entities, even the Part 371 requirements would require records entities to update their recordkeeping systems, including by amending internal procedures, reprogramming systems, reconfiguring data tables, and implementing compliance processes in similar ways as are expected to be required for records entities complying with the Final Rules.

As an example of the additional information required to be maintained under the Final Rules as compared to Part 371, the counterparty-level data required in Table A–2 to the appendix of the Final Rules includes the next margin payment date and payment amount. This will assist the FDIC in ensuring that a covered financial company and its subsidiaries perform their QFC obligations, including meeting clearing organization margin calls. The Table A–3 legal agreement information, which is not included in Part 371, is necessary to enable the FDIC as receiver to evaluate the likely treatment of QFCs under such contracts, and to inform the FDIC of any third-party credit enhancement and the identification of any default or other termination event provisions that reference an entity. Table A–4 includes additional collateral detail data, such as the location of collateral, the collateral segregation status, and whether the collateral may be subject to re-hypothecation by the counterparty. These additional data are necessary to enable the FDIC to assess risks associated with the collateral and improve the FDIC's ability to analyze various QFC transfer or termination scenarios. For example, for cross-border transactions, this information would help the FDIC evaluate the availability of collateral in different jurisdictions and the related close-out risks under local law if the receiver cannot arrange for the transfer of QFC positions. As noted above, we believe in many cases records entities are maintaining the additional information required under the rules due to existing business practices or other regulatory requirements. However, the Secretary understands that these large corporate groups are not currently maintaining the QFC records in the standardized format prescribed by the Final Rules and as set forth in the appendix to the Final Rules such that the additional information required will impose additional burden associated with amending internal procedures, reconfiguring data tables,

[162] *See* 12 U.S.C. 5365(i)(2).

[163] *See* 17 CFR 50.50(d).

and implementing compliance processes.

c. Standardized Recordkeeping

The Secretary determined that requiring records entities to have the capacity to maintain and generate QFC records in the uniform, standardized format set forth in the appendix to the Final Rules is necessary to assist the FDIC in being able to effectively exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act. Specifically, when the FDIC is appointed as receiver of a covered financial company, the covered financial company's QFC counterparties are prohibited from exercising their contractual right of termination until 5 p.m. (eastern time) on the first business day following the date of appointment. After its appointment as receiver and prior to the close of the aforementioned 5 p.m. deadline, the FDIC has three options in managing a covered financial company's QFC portfolio. Specifically, with respect to all of the covered financial company's QFCs with a particular counterparty and all its affiliates, the FDIC may: (1) Transfer the QFCs to a financial institution, including a bridge financial company established by the FDIC; (2) retain the QFCs within the receivership and allow the counterparty to exercise contractual remedies to terminate the QFCs; or (3) retain the QFCs within the receivership, disaffirm or repudiate the QFCs, and pay compensatory damages. If the FDIC transfers the QFCs to a financial institution, the counterparty may not terminate the QFCs solely because the QFCs were transferred, or by reason of the covered financial company's financial condition or insolvency or the appointment of the FDIC as receiver. If the FDIC does not transfer the QFCs and does not disaffirm or repudiate such QFCs within the one business day stay period, the counterparty may exercise contractual remedies to terminate the QFCs and assert claims for payment from the covered financial company and may have rights to liquidate the collateral pledged by the covered financial company.

Previously, in developing the Proposed Rules, the Secretary considered reducing the recordkeeping burden by permitting the maintenance of QFC records in non-standardized formats, but determined, after consulting with the FDIC, that this alternative would compromise the FDIC's flexibility as receiver in managing the QFC portfolio and impair its ability as receiver to maximize the value of the assets of the covered financial company in the context of orderly liquidation.[164] The Secretary reaffirms in the Final Rules that this determination is appropriate in order to ensure that the FDIC, in a Title II resolution scenario, has the maximum potential to execute a prompt and effective decision regarding the disposition of the QFC portfolio of a covered financial company.

However, while the Final Rules specify a standardized recordkeeping format, the Secretary also recognizes that there may be particular types of QFC or counterparties for which more limited information may be sufficient to enable the FDIC to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act. The Final Rules provide the Secretary with the discretion to grant conditional or unconditional exemptions from compliance with one or more of the requirements of the Final Rules, which could include exemptions with respect to the information required regarding particular types of QFCs or counterparties.

5. Affected Population

Instead of requiring all financial companies to maintain records with respect to QFCs, the Secretary is limiting the scope of the Final Rules to a narrow subset of financial companies. Discretion to do so is afforded under section 210(c)(8)(H)(iv) of the Act, which requires the recordkeeping requirements to differentiate among financial companies by taking into consideration, among other things, their size and risk. The Secretary is exercising this discretion to define the term ''records entity'' and thereby include within the scope of the Final Rules only those financial companies that: (1) Are identified as U.S. G–SIBs; (2) the Council determines could pose a threat to U.S. financial stability; (3) the Council designates as systemically important financial market utilities; (4) have total consolidated assets equal to or greater than $50 billion and either (i) total gross notional derivatives outstanding equal to or greater than $250 billion or (ii) derivative liabilities equal to or greater than $3.5 billion; or (5) are part of the same corporate group in which at least one financial company satisfies one or more of the other foregoing criteria. The Final Rules would only apply to large corporate groups (including a large corporate group's affiliated financial companies, regardless of their size, if the affiliated financial company is a party to an open QFC and is not an ''excluded entity'' under the Final Rules). The types of financial companies that would qualify as records entities under the Final Rules include those listed in section II.A.1.b, above. The Secretary estimates that 30 large corporate groups would be subject to the recordkeeping requirements.

6. Assessment of Potential Costs and Benefits

a. Potential Costs

Based on discussions with the PFRAs who are familiar with financial company operations and have experience supervising financial companies with QFC portfolios, the Secretary believes that the costs of implementing the Final Rules may be mitigated by the fact that records entities should be maintaining most of the QFC information required by the Final Rules as part of their ordinary course of business. However, the Secretary recognizes that the requirement in the Final Rules for records to be maintained in a standardized format, among other requirements, may impose costs and burdens on records entities. In order to comply with the Final Rules, each of the approximately 30 large corporate groups that the Secretary estimates would be subject to the recordkeeping requirements will need to have network infrastructure to maintain data in the required format. The Secretary expects that this will likely impose one-time initial costs on each large corporate group in connection with necessary updates to their recordkeeping systems, such as systems development or modifications. The initial costs to set up network infrastructure will depend on whether a large corporate group already holds and maintains QFC data in an organized electronic format, and if so, whether the data currently reside on different systems rather than on one centralized system. Large corporate groups may need to amend internal procedures, reprogram systems, reconfigure data tables, and implement compliance processes. Moreover, they may need to standardize the data and create tables to match the format required by the Final Rules. However, the Secretary believes that the large corporate groups that would be subject to the Final Rules are likely to rely on existing centralized systems for recording and reporting QFC activities to perform most of the recordkeeping and reporting requirements set forth herein. The entity within the corporate group responsible for this centralized system will likely operate and maintain a technology shared services model with the majority of technology applications,

[164] *See* 12 U.S.C. 5390(a)(1)(B)(iv).

systems, and data shared by the affiliated financial companies within the large corporate group. In addition, as referenced above, the Final Rules will also require the top-tier financial company of the corporate group to be capable of generating a single, compiled set of the records specified in the Final Rules for all records entities in the corporate group that it consolidates or are consolidated with it and to be capable of providing such a set of records to its PFRA and the FDIC. Therefore, the Final Rules will likely impose the most significant costs on the entity or entities within the large corporate group responsible for such centralized systems, which is reflected in the cost estimates for large corporate groups provided herein; most affiliated financial companies within a large corporate group are not expected to bear significant costs. The affiliated financial companies will likely have much lower costs because they can utilize and rely upon the technology and network infrastructure operated and maintained by the entity responsible for the centralized system within the large corporate group.

Previously, the Secretary estimated the costs of the initial and annual recordkeeping burdens, as well as the annual reporting burden, associated with the Proposed Rules in both man-hours and dollar terms and requested comment on whether the cost estimates were reasonable. As noted above, the Secretary's recordkeeping, reporting, data retention, and records generation burden estimates were based on discussions with the PFRAs regarding their prior experience with burden estimates for other recordkeeping systems. The Secretary also considered the burden estimates in rulemakings with similar recordkeeping requirements. For example, the initial non-recurring burden estimates provided in rulemakings for such recordkeeping requirements varied based on the scope of requirements and the type of entity subject to the requirements, but included initial burden estimates ranging from approximately 100 to 3,300 hours and estimates of required investments in technology and infrastructure from $50,000 to $250,000. Although the type and amount of data collected and reported for such reporting systems are substantively different in both content and format from the data that would be recorded under the Final Rules, the estimates from these prior rulemakings nevertheless provide some guidance as to the scale of system modifications and information technology investments that would be required for compliance with the Final Rules. Similarly, the types of information technology professionals that will establish the recordkeeping and data retention for records entities under the final rules are expected to be similar to the professionals involved in establishing the other systems referenced above.

Most commenters offered general comments on the costs associated with complying with the Proposed Rules, with several stating that the costs—either in general, or as related to certain proposed recordkeeping requirements—outweighed the benefits to the FDIC as receiver.[165] Some commenters addressed the impact that the Proposed Rules would have on entities' recordkeeping and information systems. For example, one commenter stated that the Proposed Rules, if not modified, would force market participants to rebuild existing recordkeeping systems and protocols and impose significant expense.[166] One commenter directly referenced the Secretary's cost estimates in the context of such commenter's request for an extension of the proposed initial compliance period, stating that the Secretary's estimate of the cost of such work for most financial groups subject to the rule will far exceed the Secretary's estimation of the total industry-wide compliance cost.[167] On this basis, the commenter went on to request that the initial 270-day compliance period provided for in the Proposed Rules be extended to two years and that compliance be phased in over a period of years based on the potential criticality of QFCs to the FDIC during resolution. However, neither this commenter, nor any other commenter on the Proposed Rules, offered quantified costs, estimated or otherwise, or other empirical data in support of these comments.

As discussed in detail in section II above, after carefully considering all of the comments received and consulting with the FDIC, the Secretary is adopting numerous changes from the Proposed Rules. Many of these changes are being adopted in response to comments and are intended to limit the scope and mitigate the burdens associated with complying with the QFC recordkeeping requirements of the Final Rules. In main part, these changes relate to narrowing the scope of the definition of ''records entity,'' extending the initial compliance period for all records entities, eliminating certain proposed recordkeeping requirements, and providing for a de minimis exemption from the preponderance of the recordkeeping requirements for certain records entities that have a minimal level of QFC activity.

Taking into consideration the changes made in the Final Rules and the comments received as to the burden the rules would place on records entities, the Secretary has updated the estimated potential costs. It is estimated that the initial recordkeeping burden for all records entities (including affiliates) will be approximately 218,505 hours with a total one-time initial cost of approximately $36,631,995 (in nominal dollars), representing $1,221,000 per large corporate group on average. The basis for this estimate, discussed further below, is necessarily constrained by the limited availability of relevant information, including the lack of quantitative information from commenters.

Specifically, based on staff-level discussions with several of the PFRAs, burden estimates in rulemakings with similar recordkeeping requirements, and the comments received, it is expected that each of the approximately 30 large corporate groups will incur on average approximately $500,000 in systems development and modification costs, including the purchase of computer software, and that the entity responsible for maintaining the centralized system within each large corporate group will incur 7,200 initial burden hours at a cost of $712,800 to update to their recordkeeping systems. This initial burden is mitigated to some extent because QFC data is likely already retained in some form by each large corporate group respondent in the ordinary course of business, but large corporate group respondents may need to amend internal procedures, reprogram systems, reconfigure data tables, and implement compliance processes. Moreover, they may need to standardize the data and create records tables to match the format required by the Final Rules. These costs will likely be borne by the entity responsible for maintaining the centralized system within each large corporate group. It is expected that the initial burden hours will require the work of senior programmers, programmer analysts,

[165] *See, e.g.,* ACLI letter, pp. 17–19; SIFMA AMG letter, p. 4.

[166] *See* TIAA–CREF letter, p. 2. Two other commenters stated that the Proposed Rules would have a significant impact on information technology and systems development, but these comments arose in the context of clearing organizations not having access to much of the information required under the Final Rules. *See* DTCC letter, p. 10; OCC letter, p. 12. The Secretary has provided a conditional exemption for registered derivatives clearing organizations and clearing agencies from the recordkeeping requirements of the Final Rules as discussed in section II.A.1.a, above.

[167] *See* TCH et al. letter, pp. 3–4.

senior system analysts, compliance managers, compliance clerks, directors of compliance, and compliance attorneys. The Secretary has estimated that the average hourly wage rate for recordkeepers to comply with the initial recordkeeping burden is approximately $99 per hour based in part on average hourly wage rate for these occupations in the U.S. Department of Labor, Bureau of Labor Statistics' occupational employment statistics and wage statistics for financial sector occupations, dated May 2015.[168]

The total estimated one-time cost for all large corporate group respondents to comply with the initial recordkeeping burden, is approximately $36,384,000, of which $21,384,000 is due to the burden hours and $15,000,000 is for systems development and modification costs. This is based on the estimated 7,200 initial burden hours for each of the 30 large corporate groups multiplied by the estimated average hourly wage rate for recordkeepers (216,000 hours multiplied by $99/hour) and the $500,000 in systems development and modification costs for each of the 30 large corporate groups. Finally, the total estimated one-time initial cost includes the estimated cost for the 5,010 affiliated financial company respondents to comply with the initial recordkeeping burden, which is approximately $247,995. This is based on an estimated 0.5 initial burden hour for each affiliated financial company, 5,010 affiliated financial companies, and the $99 estimated average hourly wage rate for recordkeepers described above (2,505 hours multiplied by $99/hour).

However, section 148.1(d)(1)(i) of the Final Rules provides for compliance periods of between 540 days and four years after the effective date of the Final Rules, depending on the total assets of records entities. Thus, the initial recordkeeping burden is expected to occur over multiple years, resulting in a substantial reduction in the annual cost. Information as to how records entities would spread this initial cost over the compliance period is not available. However, assuming the costs would be incurred evenly over the entire compliance period, this would result in annual one-time, initial recordkeeping costs ranging from $814,000 for a large corporate group with a 540 day compliance period to $305,267 for a large corporate group with a four year compliance period.

Based in part on staff-level discussions with several of the PFRAs, burden estimates in rulemakings with similar recordkeeping requirements, and the comments received, it is expected that the total estimated recurring annual recordkeeping burden necessary to oversee, maintain, and utilize the recordkeeping system will be approximately 240 hours for each large corporate group and 0.5 hours for each affiliated financial company. Based on the estimate of 30 large corporate groups and 168 affiliates of each corporate group that will be subject to the rules, the total estimated annual recordkeeping burden for all record entities will be approximately 9,705 hours with a total annual cost of approximately $960,795 (9,705 hours multiplied by $99/hour). The estimated average hourly wage rate for recordkeepers to comply with the annual recordkeeping burden is approximately $99 per hour, using the same methodology described above for compliance with the initial recordkeeping burden.

With regard to reporting burdens under the Final Rules, a records entity may request in writing an extension of time with respect to compliance with the recordkeeping requirements or an exemption from the recordkeeping requirements. The annual reporting burden under the Final Rules associated with such exemption requests is estimated to be approximately 50 hours per large corporate group. The estimated average hourly rate for recordkeepers to comply with the annual reporting burden is approximately $192 per hour based on the U.S. Department of Labor, Bureau of Labor Statistics' occupational employment statistics and wage statistics for financial sector occupations, dated May 2015. The $192 hourly wage rate is based on the average hourly wage rates for compliance managers, directors of compliance, and compliance attorneys that will conduct the reporting. The total annual cost of the reporting burden under the Final Rules is approximately $288,000 (50 hours multiplied by 30 records entities multiplied by $192/hour).

Based on the total one-time cost (phased in over 540 days to 4 years), the total annual recordkeeping cost, and the total annual cost of the reporting burden, the estimated net present values of the estimated potential costs of the Final Rules over the next 10 years are approximately $42,103,000 using a discount rate of 3 percent and $38,000,000 using a discount rate of 7 percent.

The estimated potential costs in nominal dollars for the initial recordkeeping burden, the annual recordkeeping burden, and the annual reporting burden associated with the Final Rules are summarized in the following table.

QFC RECORDKEEPING REQUIREMENTS FINAL RULE—POTENTIAL COSTS

	Initial recordkeeping	Annual recordkeeping	Annual reporting
30 Large Corporate Groups:			
Estimated Hours per Group	7,200	240	50
Total Hours	216,000	7,200	1,500
Total Cost	$21,384,000	$712,800	$288,000
5,010 Affiliates:			
Estimated Hours per Affiliate	0.5	0.5	.....
Total Hours	2,505	2,505	.....
Total Cost	$247,995	$247,995	.....
IT Costs:			
Estimated IT Costs per Corporate Group	$500,000	.....	.....
Total Cost	$15,000,000	.....	.....
Total:			
Hours	218,505	9,705	1,500
Cost	$36,631,995	$960,795	$288,000
Memorandum:			

[168] All cost and wage estimates are in nominal dollars and have not been adjusted for inflation.

QFC RECORDKEEPING REQUIREMENTS FINAL RULE—POTENTIAL COSTS—Continued

	Initial recordkeeping	Annual recordkeeping	Annual reporting
Estimated average hourly wage/rate *	$99	$99	$192

* Estimated average hourly rate for recordkeepers to comply with the initial and annual recordkeeping and annual reporting requirements, based on the U.S. Department of Labor, Bureau Labor Statistics' occupational employment statistics and wage statistics for financial sector occupations, dated May 2015.

b. Potential Benefits

As noted earlier, QFCs tend to increase the interconnectedness of the financial system, and the recent financial crisis demonstrated that the management of QFC positions can be an important element of a resolution strategy which, if not handled properly, may magnify market instability. The recordkeeping requirements of the Final Rules are therefore designed to ensure that the FDIC, as receiver of a covered financial company, will have comprehensive information about the QFC portfolio of such financial company subject to orderly resolution, and enable the FDIC to carry out the rapid and orderly resolution of a financial company's QFC portfolio in the event of insolvency, for example, by transferring QFCs to a bridge financial company within the narrow time frame afforded by the Act. Given the short time frame for FDIC decisions regarding a QFC portfolio of significant size or complexity, the Final Rules require the use of a regularly updated and standardized recordkeeping format to allow the FDIC to process the large amount of QFC information quickly. In the absence of updated and standardized information, for example, the FDIC could leave QFCs in the receivership when transferring them to a bridge financial company or other solvent financial institution would have been the preferred course of action had better information been available. Specifically, if the FDIC does not transfer the QFCs and does not disaffirm or repudiate such QFCs, counterparties may terminate the QFCs and assert claims for payment from the covered financial company and may have rights to liquidate the collateral pledged by the covered financial company. However, a decision by the FDIC not to transfer the QFCs of a large, interconnected financial company must be calculated and based on detailed information about the QFC portfolio. Otherwise, the subsequent unwinding and termination of QFCs involving numerous counterparties risks becoming disorderly, potentially resulting in the rapid liquidation of collateral, deterioration in asset values, and severe negative consequences for U.S. financial stability. The FDIC as receiver may also wish to make sure that affiliates of the covered financial company continue to perform their QFC obligations in order to preserve the critical operations of the covered financial company and its affiliates. In such cases, the FDIC may need to arrange for additional liquidity, support, or collateral to the affiliates to enable them to meet collateral obligations and generally perform their QFC obligations.

While there could be significant benefits associated with the QFC recordkeeping requirements of the Final Rules, such benefits are difficult to quantify. The Final Rules are only one component of the orderly liquidation authority under Title II of the Act and the benefits of the Final Rules will only be realized upon such authority being exercised. Moreover, implementation of additional provisions of the Dodd-Frank Act has, among other things: (1) Subjected large, interconnected financial companies to stronger supervision, and, as a result, reduced the likelihood of their failure; and (2) blunted the impact of any such failure on U.S. financial stability and the economy. For example, bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board are subject to supervisory and company-run stress tests to help the Board and the company measure the sufficiency of capital available to support the company's operations throughout periods of stress.[169] These financial companies also are or will be subject to more stringent prudential standards, including risk-based capital and liquidity requirements, which will make their failure less likely. However, if such a financial company does fail, the implementation of the Dodd-Frank Act is also intended to ensure that its failure and resolution under the Bankruptcy Code may occur without adverse effects on U.S. financial stability. For example, each of these large bank holding companies and nonbank financial companies supervised by the Board will have in place resolution plans to facilitate their rapid and orderly resolution under the Bankruptcy Code in the event of material financial distress or failure.[170] The Title II orderly liquidation authority will only be used to resolve a failing financial company if its resolution under the Bankruptcy Code would have serious adverse effects on U.S. financial stability. In addition, there are substantial procedural safeguards to prevent the unwarranted use of the Title II orderly liquidation authority.

Nevertheless, one way to gauge the potential benefits of the Final Rules is to examine the effect of the recent financial crisis on the real economy and how the Title II orderly liquidation authority as a whole will help reduce the probability or severity of a future financial crisis. For example, in a 2013 Government Accountability Office (GAO) report, GAO cited research that suggests that U.S. output losses associated with the 2007–2009 financial crisis could range from several trillion dollars to over $10 trillion.[171] GAO also surveyed financial market regulators, academics, and industry and public interest groups who identified, *inter alia,* the more stringent prudential standards discussed above and the orderly liquidation authority as not only enhancing financial stability, at least in principle, but also helping to reduce the probability or severity of a future crisis.[172]

However, as discussed above, even if the benefits of preventing future financial crises are significant, it is difficult to quantify such benefits and determine what portion would be attributable to any single provision of the Dodd-Frank Act, let alone those benefits directly attributable to the Final Rules. In addition, as discussed above, the benefits associated with the Final Rules would only be realized if the Title II orderly liquidation authority is

[169] *See* 12 U.S.C. 5365(i); 12 CFR part 252.

[170] *See* 12 U.S.C. 5365(d).

[171] *See* Government Accountability Office, Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act, GAO–13–180 at 15–16 (Jan. 16, 2013).

[172] *Id.* at 33–34. GAO added that the experts it surveyed had differing views on these provisions but that many expect some or all of the provisions to improve the financial system's resilience to shocks.

exercised and, even if utilized, the Final Rules are only one component of the orderly liquidation authority and the resulting benefits.

7. Retrospective Analysis

Executive Order 13563 also directs the Secretary to develop a plan, consistent with law and the Department of the Treasury's resources and regulatory priorities, to conduct a periodic retrospective analysis of significant regulations to determine whether such regulations should be modified, streamlined, expanded, or repealed so as to make the regulations more effective and less burdensome. The Secretary expects to conduct a retrospective analysis not later than seven years after the effective date of the Final Rules. This review will consider whether the QFC recordkeeping requirements are necessary or appropriate to assist the FDIC as receiver in being able to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act and may result in proposed amendments to the Final Rules. For example, the Secretary will review whether the total assets and derivatives thresholds of the definition of ''records entity'' should be adjusted and whether the data set forth in Tables A–1 through A–4 and the master tables in the appendix of the Final Rules are necessary or appropriate to assist the FDIC as receiver, and whether maintaining different data is necessary or appropriate.

List of Subjects in 31 CFR Part 148

Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Department of the Treasury adds part 148 to 31 CFR chapter I to read as follows:

Part 148—Qualified Financial Contracts Recordkeeping Related to the FDIC Orderly Liquidation Authority

Authority: 31 U.S.C. 321(b) and 12 U.S.C. 5390(c)(8)(H).

§ 148.1 Scope, purpose, effective date, and compliance dates.

(a) *Scope.* This part applies to each financial company that is a records entity and, with respect to § 148.3(a), a top-tier financial company of a corporate group as defined in § 148.2.

(b) *Purpose.* This part establishes recordkeeping requirements with respect to QFCs of records entities in order to assist the Federal Deposit Insurance Corporation (''FDIC'') as receiver for a covered financial company (as defined in 12 U.S.C. 5381(a)(8)) in being able to exercise its rights and fulfill its obligations under 12 U.S.C. 5390(c)(8), (9), or (10).

(c) *Effective Date.* This part shall become effective December 30, 2016.

(d) *Compliance*—(1) *Initial compliance dates.* (i) A records entity subject to this part on the effective date must comply with § 148.3(a)(2) on the date that is 90 days after the effective date and with all other applicable requirements of this part on the date that is:

(A) 540 days after the effective date for a records entity that:

(*1*) Has total assets equal to or greater than $1 trillion; or

(*2*) Is a member of the corporate group of any such records entity described in paragraph (d)(1)(i)(A)(1) of this section;

(B) Two years after the effective date for any records entity that is not subject to the compliance date set forth in paragraph (d)(1)(i)(A) of this section and:

(*1*) Has total assets equal to or greater than $500 billion; or

(*2*) Is a member of the corporate group of any such records entity described in paragraph (d)(1)(i)(B)(1) of this section; and

(C) Three years after the effective date for any records entity that is not subject to the compliance date set forth in paragraphs (d)(1)(i)(A) or (B) of this section and:

(*1*) Has total assets equal to or greater than $250 billion; or

(*2*) Is a member of the corporate group of any such records entity described in paragraph (d)(1)(i)(C)(1) of this section; and

(D) Four years after the effective date for any records entity that is not subject to the compliance dates set forth in paragraphs (d)(1)(i)(A), (B), or (C) of this section.

(ii) A financial company that becomes a records entity after the effective date must comply with § 148.3(a)(2) within 90 days of becoming a records entity and with all other applicable requirements of this part within 540 days of becoming a records entity or within the remainder of the applicable period provided under paragraph (d)(1)(i) of this section, whichever period is longer.

(2) *Subsequent compliance dates.* If a financial company that at one time met the definition of records entity later ceases to meet the definition of records entity and thereafter, on any subsequent date, again meets the definition of a records entity, such financial company must comply with all applicable requirements of this part within 365 days after such subsequent date, or within the remainder of the applicable period provided under paragraph (d)(1)(i) of this section, whichever period is longer.

(3) *Extensions of time to comply.* The Secretary, in consultation with the FDIC, may grant one or more extensions of time for compliance with this part. A records entity may request an extension of time by submitting a written request to the Department of the Treasury and the FDIC at least 30 days prior to the deadline for its compliance provided under paragraph (d)(1) of this section. The written request for an extension must contain:

(i) A statement of the reasons why the records entity cannot comply by the deadline; and

(ii) A plan for achieving compliance during the requested extension period.

(4) *Compliance by top-tier financial company.* A top-tier financial company must comply with § 148.3(a)(1)(ii) on the same date as the date on which the records entity members of the corporate group of which it is the top-tier financial company are required to comply with this part.

§ 148.2 Definitions.

For purposes of this part:

(a) *Affiliate* means any entity that controls, is controlled by, or is under common control with another entity.

(b) *Control.* An entity ''controls'' another entity if:

(1) The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity;

(2) The entity controls in any manner the election of a majority of the directors or trustees of the other entity; or

(3) The Board of Governors of the Federal Reserve System has determined, after notice and opportunity for hearing in accordance with 12 CFR 225.31, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity.

(c) *Corporate group* means an entity and all affiliates of that entity.

(d) *Counterparty* means any natural person or entity (or separate foreign

branch or division of any entity) that is a party to a QFC with a records entity.

(e) *Derivative liabilities* means the fair value of derivative instruments in a negative position as of the end of the most recent fiscal year end, as recognized and measured in accordance with U.S. generally accepted accounting principles or other applicable accounting standards. Such value shall be adjusted for the effects of master netting agreements and cash collateral held with the same counterparty on a net basis to the extent such adjustments are reflected on the audited consolidated statement of financial condition of the applicable financial company filed with its primary financial regulatory agency or agencies or, for financial companies not required to file such statements, on the consolidated balance sheet of the financial company prepared in accordance with U.S. generally accepted accounting principles or other applicable accounting standards.

(f) *Excluded entity* means:

(1) An insured depository institution as defined in 12 U.S.C. 1813(c)(2);

(2) A subsidiary of an insured depository institution that is not:

(i) A functionally regulated subsidiary as defined in 12 U.S.C. 1844(c)(5);

(ii) A security-based swap dealer as defined in 15 U.S.C. 78c(a)(71); or

(iii) A major security-based swap participant as defined in 15 U.S.C. 78c(a)(67); or

(3) An insurance company.

(g) *Financial company* has the meaning set forth in 12 U.S.C. 5381(a)(11).

(h) *Insurance company* means:

(1) An insurance company as defined in 12 U.S.C. 5381(a)(13); and

(2) A mutual insurance holding company that meets the conditions set forth in 12 CFR 380.11 for being treated as an insurance company for the purpose of section 203(e) of the Dodd-Frank Act, 12 U.S.C. 5383(e).

(i) *Legal Entity Identifier* or *LEI* for an entity shall mean the global legal entity identifier maintained for such entity by a utility accredited by the Global LEI Foundation or by a utility endorsed by the Regulatory Oversight Committee. As used in this definition:

(1) Regulatory Oversight Committee means the Regulatory Oversight Committee (of the Global LEI System), whose charter was set forth by the Finance Ministers and Central Bank Governors of the Group of Twenty and the Financial Stability Board, or any successor thereof; and

(2) Global LEI Foundation means the not-for-profit organization organized under Swiss law by the Financial Stability Board in 2014, or any successor thereof.

(j) *Parent entity* with respect to an entity is an entity that controls that entity.

(k) *Position* means an individual transaction under or evidenced by a QFC and includes the rights and obligations of a party to an individual transaction under or evidenced by a QFC.

(l) *Primary financial regulatory agency* means:

(1) With respect to any financial company, the primary financial regulatory agency as specified for such financial company in subparagraphs (A), (B), (C), and (E) of 12 U.S.C. 5301(12); and

(2) With respect to a financial market utility that is subject to a designation pursuant to 12 U.S.C. 5463 for which there is no primary financial regulatory agency under § 148.2(l)(1), the Supervisory Agency for that financial market utility as defined in 12 U.S.C. 5462(8).

(m) *Qualified financial contract* or *QFC* means any qualified financial contract defined in 12 U.S.C. 5390(c)(8)(D), including without limitation, any ''swap'' defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and in any rules or regulations issued by the Commodity Futures Trading Commission pursuant to such section; any ''security-based swap'' defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) and in any rules or regulations issued by the Securities and Exchange Commission pursuant to such section; and any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the FDIC determines by regulation, resolution, or order to be a qualified financial contract as provided in 12 U.S.C. 5390(c)(8)(D).

(n) *Records entity*—

(1) Records entity means any financial company that:

(i) Is not an excluded entity as defined in § 148.2(f);

(ii) Is a party to an open QFC; and

(iii) (A) Is subject to a determination that the company shall be subject to Federal Reserve supervision and enhanced prudential standards pursuant to 12 U.S.C. 5323;

(B) Is subject to a designation as, or as likely to become, systemically important pursuant to 12 U.S.C. 5463;

(C) Is identified as a global systemically important bank holding company pursuant to 12 CFR part 217;

(D)(*1*) Has total assets on a consolidated basis equal to or greater than $50 billion; and

(*2*) On a consolidated basis has:

(*i*) Total gross notional derivatives outstanding equal to or greater than $250 billion; or

(*ii*) Derivative liabilities equal to or greater than $3.5 billion; or

(E)(*1*) Is a member of a corporate group in which at least one financial company meets the criteria under one or more of paragraphs (n)(1)(iii)(A), (B), (C), or (D) of this section; and

(*2*)(*i*) Consolidates, is consolidated by, or is consolidated with such financial company on financial statements prepared in accordance with U.S. generally accepted accounting principles or other applicable accounting standards; or

(*ii*) For financial companies not subject to such principles or standards, would consolidate, be consolidated by, or be consolidated with such financial company if such principles or standards applied.

(2) A financial company that qualifies as a records entity pursuant to paragraph (n)(1)(iii)(D) will remain a records entity until one year after it ceases to meet the criteria set forth in paragraph (n)(1)(iii)(D) of this section.

(o) *Secretary* means the Secretary of the Treasury or the Secretary's designee.

(p) *Subsidiary* means any company that is controlled by another company.

(q) *Top-tier financial company* means a financial company that is a member of a corporate group consisting of multiple records entities and that is not itself controlled by another financial company.

(r) *Total assets* means the total assets reported on the audited consolidated statement of financial condition of the applicable financial company for the most recent year end filed with its primary financial regulatory agency or agencies or, for financial companies not required to file such statements, the total assets shown on the consolidated balance sheet of the financial company for the most recent fiscal year end as prepared in accordance with U.S. generally accepted accounting principles or other applicable accounting standards.

(s) *Total gross notional derivatives outstanding* means the gross notional value of all derivative instruments that are outstanding as of the most recent fiscal year end, as recognized and measured in accordance with U.S. generally accepted accounting principles or other applicable accounting standards.

§ 148.3 Form, availability and maintenance of records.

(a) *Form and availability*—(1) *Electronic records.* (i) Except to the extent of any relevant exemption provided under paragraph (c) of this section, a records entity is required to maintain the records described in § 148.4 in electronic form and, as applicable, in the format set forth in the tables in the appendix to this part.

(ii) A top-tier financial company must be capable of generating a single, compiled set of the records required to be maintained by § 148.4(a)–(h), in a format that allows for aggregation and disaggregation of such data by records entity and counterparty, for all records entities in its corporate group that are consolidated by or consolidated with such top-tier financial company on financial statements prepared in accordance with U.S. generally accepted accounting principles or other applicable accounting standards or, for financial companies not subject to such principles or standards, that would be consolidated by or consolidated with such financial company if such principles or standards applied.

(2) *Point of contact.* Each records entity and top-tier financial company must provide a point of contact who is responsible for recordkeeping under this part by written notice to its primary financial regulatory agency or agencies and the FDIC and must provide written notice to its primary financial regulatory agency or agencies and the FDIC within 30 days of any change in its point of contact.

(3) *Access to records.* Except to the extent of any relevant exemption provided under paragraph (c) of this section, a records entity and a top-tier financial company that are regulated by a primary financial regulatory agency shall be capable of providing electronically to such primary financial regulatory agency and the FDIC, within 24 hours of request by the primary financial regulatory agency:

(i) In the case of a records entity, the records specified in § 148.4, and

(ii) In the case of a top-tier financial company, the set of records referenced in paragraph (a)(1)(ii) of this section.

(b) *Maintenance and updating*—(1) *Daily updating.* Except to the extent of any relevant exemption provided under paragraph (c) of this section, the records maintained under § 148.4 shall be based on values and information that are no less current than previous end-of-day values and information.

(2) *Records maintenance.* The records required under § 148.4 and the capability of generating the set of records required by paragraph (a)(1)(ii) of this section may be maintained on behalf of the records entity or top-tier financial company, as applicable, by any affiliate of such records entity or top-tier financial company, as applicable, or any third-party service provider; provided that such records entity shall itself maintain records under this part in the event that such affiliate or service provider shall fail to maintain such records and such top-tier financial company shall itself maintain the capability of generating the set of records required by paragraph (a)(1)(ii) of this section in the event that such affiliate or service provider shall fail to maintain the capability of doing so.

(3) *Record retention.* A records entity shall retain records maintained under § 148.4 based on end-of-day values and information for the five preceding business days.

(c) *Exemptions*—(1) *De minimis exemption.* A records entity that is a party to 50 or fewer open QFC positions is not required to maintain the records described in § 148.4, other than the records described in § 148.4(i).

(2) *Clearing organizations.* A records entity that is a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) is not required to maintain the records described in § 148.4 if it is:

(i) In compliance with the recordkeeping requirements of the Commodity Futures Trading Commission or the Securities and Exchange Commission, as applicable, including its maintenance of records pertaining to all QFCs cleared by such records entity; and

(ii) Capable of and not restricted from, whether by law, regulation, or agreement, transmitting electronically to the FDIC the records maintained under such recordkeeping requirements within 24 hours of request of the Commodity Futures Trading Commission or the Securities and Exchange Commission, as applicable.

(3) *Requests for exemptions.* One or more records entities may request an exemption from one or more of the requirements of this part by writing to the Department of the Treasury, the FDIC, and its primary financial regulatory agency or agencies, if any. The written request for an exemption must:

(i) Identify the records entity or records entities or the types of records entities to which the exemption should apply;

(ii) Specify the requirement(s) under this part from which the identified records entities should be exempt;

(iii) Provide details as to the size, risk, complexity, leverage, frequency and dollar amount of qualified financial contracts, and interconnectedness to the financial system of each records entity identified in paragraph (c)(3)(i) of this section, to the extent appropriate, and any other relevant factors; and

(iv) Specify the reason(s) why granting the exemption will not impair or impede the FDIC's ability to exercise its rights or fulfill its statutory obligations under 12 U.S.C. 5390(c)(8), (9), and (10).

(4) *Granting exemptions.* (i) Upon receipt of a written recommendation from the FDIC, prepared in consultation with the primary financial regulatory agency or agencies for the applicable records entity or entities, that takes into consideration each of the factors referenced in 12 U.S.C. 5390(c)(8)(H)(iv) and any other factors the FDIC considers appropriate, the Secretary may grant, in whole or in part, a conditional or unconditional exemption from compliance with one or more of the requirements of this part by issuing an exemption to one or more records entities.

(ii) In determining whether to grant an exemption to one or more records entities, including whether to grant a conditional or unconditional exemption, the Secretary will consider any factors deemed appropriate by the Secretary, including whether application of one or more requirements of this part is not necessary to achieve the purpose of this part as described in § 148.1(b).

(iii) If the FDIC does not submit, within 90 days of the date on which the FDIC and the Department of the Treasury received the exemption request, a written recommendation to the Secretary as to whether to grant or deny an exemption request, the Secretary will nevertheless determine whether to grant or deny the exemption request.

§ 148.4 Content of records.

Subject to § 148.3(c), a records entity must maintain the following records:

(a) The position level data listed in Table A–1 in appendix A to this part with respect to each QFC to which it is a party.

(b) The counterparty netting set data listed in Table A–2 in appendix A to this part for each netting set with respect to each QFC to which it is a party.

(c) The legal agreements information listed in Table A–3 in appendix A to this part with respect to each QFC to which it is a party.

(d) The collateral detail data listed in Table A–4 in appendix A to this part with respect to each QFC to which it is a party.

(e) The corporate organization master data lookup table in appendix A to this part for the records entity and each of its affiliates.

(f) The counterparty master data lookup table in appendix A to this part for each non-affiliated counterparty with respect to QFCs to which it is a party.

(g) The booking location master data lookup table in appendix A to this part for each booking location used with respect to QFCs to which it is a party.

(h) The safekeeping agent master data lookup table in the appendix to this part for each safekeeping agent used with respect to QFCs to which it is a party.

(i) All documents that govern QFC transactions between the records entity and each counterparty, including, without limitation, master agreements and annexes, schedules, netting agreements, supplements, or other modifications with respect to the agreements, confirmations for each open QFC position of the records entity that has been confirmed and all trade acknowledgments for each open QFC position that has not been confirmed, all credit support documents including, but not limited to, credit support annexes, guarantees, keep-well agreements, or net worth maintenance agreements that are relevant to one or more QFCs, and all assignment or novation documents, if applicable, including documents that confirm that all required consents, approvals, or other conditions precedent for such assignment or novation have been obtained or satisfied.

(j) A list of vendors directly supporting the QFC-related activities of the records entity and the vendors' contact information.

Appendix A to Part 148—File Structure for Qualified Financial Contract Records

TABLE A–1—POSITION-LEVEL DATA

	Field	Example	Instructions and data application	Definition	Validation
A1.1	As of date	2015–01–05	Provide data extraction date	YYYY–MM–DD	
A1.2	Records entity identifier	999999999	Provide LEI for records entity. Information needed to review position-level data by records entity.	Varchar(50)	Validated against CO.2.
A1.3	Position identifier	20058953	Provide a position identifier. Should be used consistently across all record entities within the corporate group. Use the unique transaction identifier if available. Information needed to readily track and distinguish positions.	Varchar(100).	
A1.4	Counterparty identifier	888888888	Provide a counterparty identifier. Use LEI if counterparty has one. Should be used consistently by all record entities within the corporate group. Information needed to identify counterparty by reference to Counterparty Master Table.	Varchar(50)	Validated against CP.2.
A1.5	Internal booking location identifier.	New York, New York	Provide office where the position is booked. Information needed to determine system on which the trade is booked and settled.	Varchar(50)	Combination A1.2 + A1.5 + A1.6 should have a corresponding unique combination BL.2 + BL.3 + BL.4 entry in Booking Location Master Table.
A1.6	Unique booking unit or desk identifier.	xxxxxx	Provide an identifier for unit or desk at which the position is booked. Information needed to help determine purpose of position.	Varchar(50)	Combination A1.2 + A1.5 + A1.6 should have a corresponding unique combination BL.2 + BL.3 + BL.4 entry in Booking Location Master Table.
A1.7	Type of QFC	Credit, equity, foreign exchange, interest rate (including cross-currency), other commodity, securities repurchase agreement, securities lending, loan repurchase agreement, guarantee or other third party credit enhancement of a QFC.	Provide type of QFC. Use unique product identifier if available. Information needed to determine the nature of the QFC.	Varchar (100).	

TABLE A–1—POSITION-LEVEL DATA—Continued

	Field	Example	Instructions and data application	Definition	Validation
A1.7.1	Type of QFC covered by guarantee or other third party credit enhancement.	Credit, equity, foreign exchange, interest rate (including cross-currency), other commodity, securities repurchase agreement, securities lending, or loan repurchase agreement.	If QFC type is guarantee or other third party credit enhancement, provide type of QFC of the QFC that is covered by such guarantee or other third party credit enhancement. Use unique product identifier if available. If multiple asset classes are covered by the guarantee or credit enhancement, enter the asset classes separated by comma. If all the QFCs of the underlying QFC obligor identifier are covered by the guarantee or other third party credit enhancement, enter ''All''.	Varchar(500)	Only required if QFC type (A1.7) is a guarantee or other third party credit enhancement.
A1.7.2	Underlying QFC obligor identifier.	888888888	If QFC type is guarantee or other third party credit enhancement, provide an identifier for the QFC obligor whose obligation is covered by the guarantee or other third party credit enhancement. Use LEI if underlying QFC obligor has one. Complete the counterparty master table with respect to a QFC obligor that is a non-affiliate.	Varchar(50)	Only required if QFC asset type (A1.7) is a guarantee or other third party credit enhancement. Validated against CO.2 if affiliate or CP.2 if non-affiliate.
A1.8	Agreement identifier	xxxxxxxxx	Provide an identifier for the primary governing documentation, *e.g.,* the master agreement or guarantee agreement, as applicable.	Varchar(50)	Validated against A3.3.
A1.9	Netting agreement identifier	xxxxxxxxx	Provide an identifier for netting agreement. If this agreement is the same as provided in A1.8, use same identifier. Information needed to identify unique netting sets.	Varchar(50)	Validated against A3.3.
A1.10	Netting agreement counterparty identifier.	xxxxxxxxx	Provide a netting agreement counterparty identifier. Use same identifier as provided in A1.4 if counterparty and netting agreement counterparty are the same. Use LEI if netting agreement counterparty has one. Information needed to identify unique netting sets.	Varchar(50)	Validated against CP.2.
A1.11	Trade date	2014–12–20	Provide trade or other commitment date for the QFC. Information needed to determine when the entity's rights and obligations regarding the position originated.	YYYY–MM–DD.	
A1.12	Termination date	2014–03–31	Provide date the QFC terminates or is expected to terminate, expire, mature, or when final performance is required. Information needed to determine when the entity's rights and obligations regarding the position are expected to end.	YYYY–MM–DD.	
A1.13	Next call, put, or cancellation date.	2015–01–25	Provide next call, put, or cancellation date.	YYYY–MM–DD.	
A1.14	Next payment date	2015–01–25	Provide next payment date	YYYY–MM–DD.	
A1.15	Local Currency Of Position	USD	Provide currency in which QFC is denominated. Use ISO currency code.	Char(3).	

TABLE A–1—POSITION-LEVEL DATA—Continued

	Field	Example	Instructions and data application	Definition	Validation
A1.16	Current market value of the position in local currency.	995000	Provide current market value of the position in local currency. In the case of a guarantee or other third party credit enhancements, provide the current mark-to-market expected value of the exposure. Information needed to determine the current size of the obligation or benefit associated with the QFC.	Num (25,5).	
A1.17	Current market value of the position in U.S. dollars.	995000	In the case of a guarantee or other third party credit enhancements, provide the current mark-to-market expected value of the exposure. Information needed to determine the current size of the obligation/benefit associated with the QFC.	Num (25,5).	
A1.18	Asset Classification	1	Provide fair value asset classification under GAAP, IFRS, or other accounting principles or standards used by records entity. Provide ''1'' for Level 1, ''2'' for Level 2, or ''3'' for Level 3. Information needed to assess fair value of the position.	Char(1).	
A1.19	Notional or principal amount of the position in local currency.	1000000	Provide the notional or principal amount, as applicable, in local currency. In the case of a guarantee or other third party credit enhancement, provide the maximum possible exposure. Information needed to help evaluate the position.	Num (25,5).	
A1.20	Notional or principal amount of the position In U.S. dollars.	1000000	Provide the notional or principal amount, as applicable, in U.S. dollars. In the case of a guarantee or other third party credit enhancements, provide the maximum possible exposure. Information needed to help evaluate the position.	Num (25,5).	
A1.21	Covered by third-party credit enhancement agreement (for the benefit of the records entity)?	Y/N	Indicate whether QFC is covered by a guarantee or other third-party credit enhancement. Information needed to determine credit enhancement.	Char(1)	Should be ''Y'' or ''N.
A1.21.1	Third-party credit enhancement provider identifier (for the benefit of the records entity).	999999999	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for provider. Use LEI if available. Complete the counterparty master table with respect to a provider that is a non-affiliate.	Varchar(50)	Required if A1.21 is ''Y''. Validated against CP.2.
A1.21.2	Third-party credit enhancement agreement identifier (for the benefit of the records entity).	4444444	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for the agreement.	Varchar(50)	Required if A1.21 is ''Y.'' Validated against A3.3.
A1.21.3	Covered by third-party credit enhancement agreement (for the benefit of the counterparty)?	Y/N	Indicate whether QFC is covered by a guarantee or other third-party credit enhancement. Information needed to determine credit enhancement.	Char(1)	Should be ''Y'' or ''N.
A1.21.4	Third-party credit enhancement provider identifier (for the benefit of the counterparty).	999999999	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for provider. Use LEI if available. Complete the counterparty master table with respect to a provider that is a non-affiliate.	Varchar(50)	Required if A1.21.3 is ''Y''. Validated against CO.2 or CP.2.

TABLE A–1—POSITION-LEVEL DATA—Continued

	Field	Example	Instructions and data application	Definition	Validation
A1.21.5	Third-party credit enhancement agreement identifier (for the benefit of the counterparty).	4444444	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for agreement.	Varchar(50)	Required if A1.21.3 is "Y". Validated against A3.3.
A1.22	Related position of records entity.	3333333	Use this field to link any related positions of the records entity. All positions that are related to one another should have same designation in this field.	Varchar(100).	
A1.23	Reference number for any related loan.	9999999	Provide a unique reference number for any loan held by the records entity or a member of its corporate group related to the position (with multiple entries delimited by commas).	Varchar(500).	
A1.24	Identifier of the lender of the related loan.	999999999	For any loan recorded in A1.23, provide identifier for records entity or member of its corporate group that holds any related loan. Use LEI if entity has one.	Varchar(500).	

TABLE A–2—COUNTERPARTY NETTING SET DATA

	Field	Example	Instructions and data application	Definition	Validation
A2.1	As of date	2015–01–05	Data extraction date	YYYY–MM–DD.	
A2.2	Records entity identifier	999999999	Provide the LEI for the records entity.	Varchar(50)	Validated against CO.2.
A2.3	Netting agreement counterparty identifier.	888888888	Provide an identifier for the netting agreement counterparty. Use LEI if counterparty has one.	Varchar(50)	Validated against CP.2.
A2.4	Netting agreement identifier	xxxxxxxxx	Provide an identifier for the netting agreement.	Varchar(50)	Validated against A3.3.
A2.4.1	Underlying QFC obligor identifier.	888888888	Provide identifier for underlying QFC obligor if netting agreement is associated with a guarantee or other third party credit enhancement. Use LEI if available.	Varchar(50)	Validated against CO.2 or CP.2.
A2.5	Covered by third-party credit enhancement agreement (for the benefit of the records entity)?	Y/N	Indicate whether the positions subject to the netting set agreement are covered by a third-party credit enhancement agreement.	Char(1)	Should be "Y" or "N."
A2.5.1	Third-party credit enhancement provider identifier (for the benefit of the records entity).	999999999	Use LEI if available. Information needed to identity third-party credit enhancement provider.	Varchar(50)	Required if A2.5 is "Y". Validated against CP.2.
A2.5.2	Third-party credit enhancement agreement identifier (for the benefit of the records entity).	4444444		Varchar(50)	Required if A2.5 is "Y". Validated against A3.3.
A2.5.3	Covered by third-party credit enhancement agreement (for the benefit of the counterparty)?	Y/N	Information needed to determine credit enhancement.	Char(1)	Should be "Y" or "N.
A2.5.4	Third-party credit enhancement provider identifier (for the benefit of the counterparty).	999999999	Use LEI if available. Information needed to identity third-party credit enhancement provider.	Varchar(50)	Required if A2.5.3 is "Y". Should be a valid entry in the Counterparty Master Table. Validated against CP.2.
A2.5.5	Third-party credit enhancement agreement identifier (for the benefit of the counterparty).	4444444	Information used to determine guarantee or other third-party credit enhancement.	Varchar(50)	Required if A2.5.3 is "Y". Validated against A3.3.
A2.6	Aggregate current market value in U.S. dollars of all positions under this netting agreement.	−1000000	Information needed to help evaluate the positions subject to the netting agreement.	Num (25,5)	Market value of all positions in A1 for the given netting agreement identifier should be equal to this value. A2.6 = A2.7 + A2.8.
A2.7	Current market value in U.S. dollars of all positive positions, as aggregated under this netting agreement.	3000000	Information needed to help evaluate the positions subject to the netting agreement.	Num (25,5)	Market value of all positive positions in A1 for the given netting agreement identifier should be equal to this value. A2.6 = A2.7 + A2.8.

TABLE A–2—COUNTERPARTY NETTING SET DATA—Continued

	Field	Example	Instructions and data application	Definition	Validation
A2.8	Current market value in U.S. dollars of all negative positions, as aggregated under this netting agreement.	−4000000	Information needed to help evaluate the positions subject to the netting agreement.	Num (25,5)	Market value of all negative positions in A1 for the given Netting Agreement Identifier should be equal to this value. A2.6 = A2.7 + A2.8.
A2.9	Current market value in U.S. dollars of all collateral posted by records entity, as aggregated under this netting agreement.	950000	Information needed to determine the extent to which collateral has been provided by records entity.	Num (25,5)	Market value of all collateral posted by records entity for the given netting agreement Identifier should be equal to sum of all A4.9 for the same netting agreement identifier in A4.
A2.10	Current market value in U.S. dollars of all collateral posted by counterparty, as aggregated under this netting agreement.	50000	Information needed to determine the extent to which collateral has been provided by counterparty.	Num (25,5)	Market value of all collateral posted by counterparty for the given netting agreement identifier should be equal to sum of all A4.9 for the same netting agreement identifier in A4.
A2.11	Current market value in U.S. dollar of all collateral posted by records entity that is subject to re-hypothecation, as aggregated under this netting agreement.	950000	Information needed to determine the extent to which collateral has been provided by records entity.	Num (25,5).	
A2.12	Current market value in U.S. dollars of all collateral posted by counterparty that is subject to re-hypothecation, as aggregated under this netting agreement.	950000	Information needed to determine the extent to which collateral has been provided by records entity.	Num (25,5).	
A2.13	Records entity collateral—net	950000	Provide records entity's collateral excess or deficiency with respect to all of its positions, as determined under each applicable agreement, including thresholds and haircuts where applicable.	Num (25,5)	Should be less than or equal to A2.9.
A2.14	Counterparty collateral—net	950000	Provide counterparty's collateral excess or deficiency with respect to all of its positions, as determined under each applicable agreement, including thresholds and haircuts where applicable.	Num (25,5)	Should be less than or equal to A2.10.
A2.15	Next margin payment date	2015–11–05	Provide next margin payment date for position.	YYYY–MM–DD.	
A2.16	Next margin payment amount in U.S. dollars.	150000	Use positive value if records entity is due a payment and use negative value if records entity has to make the payment.	Num (25,5).	
A2.17	Safekeeping agent identifier for records entity.	888888888	Provide an identifier for the records entity's safekeeping agent, if any. Use LEI if safekeeping agent has one.	Varchar(50)	Validated against SA.2.
A2.18	Safekeeping agent identifier for counterparty.	888888888	Provide an identifier for the counterparty's safekeeping agent, if any. Use LEI if safekeeping agent has one.	Varchar(50)	Validated against SA.2.

TABLE A–3—LEGAL AGREEMENTS

	Field	Example	Instructions and data application	Definition	Validation
A3.1	As Of Date	2015–01–05	Data extraction date	YYYY–MM–DD.	
A3.2	Records entity identifier	999999999	Provide LEI for records entity.	Varchar(50)	Validated against CO.2.
A3.3	Agreement identifier	xxxxxx	Provide identifier for each master agreement, governing document, netting agreement or third-party credit enhancement agreement.	Varchar(50).	

TABLE A–3—LEGAL AGREEMENTS—Continued

	Field	Example	Instructions and data application	Definition	Validation
A3.4	Name of agreement or governing document.	ISDA Master 1992 or Guarantee Agreement or Master Netting Agreement.	Provide name of agreement or governing document.	Varchar(50).	
A3.5	Agreement date	2010–01–25	Provide the date of the agreement.	YYYY–MM–DD.	
A3.6	Agreement counterparty identifier.	888888888	Use LEI if counterparty has one. Information needed to identify counterparty.	Varchar(50)	Validated against field CP.2.
A3.6.1	Underlying QFC obligor identifier.	888888888	Provide underlying QFC obligor identifier if document identifier is associated with a guarantee or other third party credit enhancement. Use LEI if underlying QFC obligor has one.	Varchar(50)	Validated against CO.2 or CP.2.
A3.7	Agreement governing law.	New York	Provide law governing contract disputes.	Varchar(50).	
A3.8	Cross-default provision?	Y/N	Specify whether agreement includes default or other termination event provisions that reference an entity not a party to the agreement (''cross-default Entity''). Information needed to determine exposure to affiliates or other entities.	Char(1)	Should be ''Y'' or ''N.
A3.9	Identity of cross-default entities.	777777777	Provide identity of any cross-default entities referenced in A3.8. Use LEI if entity has one. Information needed to determine exposure to other entities.	Varchar(500)	Required if A3.8 is ''Y''. ID should be a valid entry in Corporate Org Master Table or Counterparty Master Table, if applicable. Multiple entries comma separated.
A3.10	Covered by third-party credit enhancement agreement (for the benefit of the records entity)?	Y/N	Information needed to determine credit enhancement.	Char(1)	Should be ''Y'' or ''N.''
A3.11	Third-party credit enhancement provider identifier (for the benefit of the records entity).	999999999	Use LEI if available. Information needed to identity Third-Party Credit Enhancement Provider.	Varchar(50)	Required if A3.10 is ''Y''. Should be a valid entry in the Counterparty Master Table. Validated against CP.2.
A3.12	Associated third-party credit enhancement agreement document identifier (for the benefit of the records entity).	33333333	Information needed to determine credit enhancement.	Varchar(50)	Required if A3.10 is ''Y''. Validated against field A3.3.
A3.12.1	Covered by third-party credit enhancement agreement (for the benefit of the counterparty)?	Y/N	Information needed to determine credit enhancement.	Char(1)	Should be ''Y'' or ''N.''
A3.12.2	Third-party credit enhancement provider identifier (for the benefit of the counterparty).	999999999	Use LEI if available. Information needed to identity Third-Party Credit Enhancement Provider.	Varchar(50)	Required if A3.12.1 is ''Y''. Should be a valid entry in the Counterparty Master. Validated against CP.2.

TABLE A–3—LEGAL AGREEMENTS—Continued

	Field	Example	Instructions and data application	Definition	Validation
A3.12.3	Associated third-party credit enhancement agreement document identifier (for the benefit of the counterparty).	33333333	Information needed to determine credit enhancement.	Varchar(50)	Required if A3.12.1 is "Y". Validated against field A3.3.
A3.13	Counterparty contact information: name.	John Doe & Co	Provide contact name for counterparty as provided under notice section of agreement.	Varchar(200).	
A3.14	Counterparty contact information: address.	123 Main St, City, State Zip code.	Provide contact address for counterparty as provided under notice section of agreement.	Varchar(100).	
A3.15	Counterparty contact information: phone.	1–999–999–9999	Provide contact phone number for counterparty as provided under notice section of agreement.	Varchar(50).	
A3.16	Counterparty's contact information: email address.	*Jdoe@JohnDoe.com*	Provide contact email address for counterparty as provided under notice section of agreement.	Varchar(100).	

TABLE A–4—COLLATERAL DETAIL DATA

	Field	Example	Instructions and data application	Definition	Validation
A4.1	As of date	2015–01–05	Data extraction date	YYYY–MM–DD.	
A4.2	Records entity identifier	999999999	Provide LEI for records entity	Varchar(50)	Validated against CO.2.
A4.3	Collateral posted/collateral received flag.	P/N	Enter "P" if collateral has been posted by the records entity. Enter "R" for collateral received by Records Entity.	Char(1).	
A4.4	Counterparty identifier	888888888	Provide identifier for counterparty. Use LEI if counterparty has one.	Varchar(50)	Validated against CP.2.
A4.5	Netting agreement identifier	xxxxxxxxx	Provide identifier for applicable netting agreement.	Varchar(50)	Validated against field A3.3.
A4.6	Unique collateral item identifier	CUSIP/ISIN	Provide identifier to reference individual collateral posted.	Varchar(50).	
A4.7	Original face amount of collateral item in local currency.	1500000	Information needed to evaluate collateral sufficiency and marketability.	Num (25,5)	
A4.8	Local currency of collateral item.	USD	Use ISO currency code	Char(3).	
A4.9	Market value amount of collateral item in U.S. dollars.	850000	Information needed to evaluate collateral sufficiency and marketability and to permit aggregation across currencies.	Num (25,5)	Market value of all collateral posted by Records Entity or Counterparty A2.9 or A2.10 for the given netting agreement identifier should be equal to sum of all A4.9 for the same netting agreement identifier in A4.
A4.10	Description of collateral item	U.S. Treasury Strip, maturity 2020/6/30.	Information needed to evaluate collateral sufficiency and marketability.	Varchar(200).	
A4.11	Asset classification	1	Provide fair value asset classification for the collateral item under GAAP, IFRS, or other accounting principles or standards used by records entity. Provide "1" for Level 1, "2" for Level 2, or "3" for Level 3.	Char(1)	Should be "1" or "2" or "3."
A4.12	Collateral or portfolio segregation status.	Y/N	Specify whether the specific item of collateral or the related collateral portfolio is segregated from assets of the safekeeping agent.	Char(1)	Should be "Y" or "N."

TABLE A–4—COLLATERAL DETAIL DATA—Continued

	Field	Example	Instructions and data application	Definition	Validation
A4.13	Collateral location	ABC broker-dealer (in safe-keeping account of counterparty).	Provide location of collateral posted.	Varchar(200).	
A4.14	Collateral jurisdiction	New York, New York	Provide jurisdiction of location of collateral posted.	Varchar(50).	
A4.15	Is collateral re-hypothecation allowed?	Y/N	Information needed to evaluate exposure of the records entity to the counterparty or vice-versa for re-hypothecated collateral.	Char(1)	Should be ''Y'' or ''N.''

CORPORATE ORGANIZATION MASTER TABLE [1]

	Field	Example	Instructions and data application	Definition	Validation
CO.1	As of date	2015–01–05	Data extraction date	YYYY–MM–DD.	
CO.2	Entity identifier	888888888	Provide unique identifier. Use LEI if available. Information needed to identify entity.	Varchar(50)	Should be unique across all record entities.
CO.3	Has LEI been used for entity identifier?	Y/N	Specify whether the entity identifier provided is an LEI.	Char(1)	Should be ''Y'' or ''N.''
CO.4	Legal name of entity	John Doe & Co	Provide legal name of entity	Varchar(200).	
CO.5	Immediate parent entity identifier.	77777777	Use LEI if available. Information needed to complete org structure.	Varchar(50).	
CO.6	Has LEI been used for immediate parent entity identifier?	Y/N	Specify whether the immediate parent entity identifier provided is an LEI.	Char(1)	Should be ''Y'' or ''N.''
CO.7	Legal name of immediate parent entity.	John Doe & Co	Information needed to complete org structure.	Varchar(200).	
CO.8	Percentage ownership of immediate parent entity in the entity.	100.00	Information needed to complete org structure.	Num (5,2).	
CO.9	Entity type	Subsidiary, foreign branch, foreign division	Information needed to complete org structure.	Varchar(50).	
CO.10	Domicile	New York, New York	Enter as city, state or city, foreign country.	Varchar(50).	
CO.11	Jurisdiction under which incorporated or organized.	New York	Enter as state or foreign jurisdiction.	Varchar(50).	
CO.12	Reporting status	REN	Indicate one of the following, as appropriate, given status of entity under the this part. Information needed to validate compliance with the requirements of this part. REN = Records entity (reporting). NFC= Non-financial company (not reporting). EXC = Excluded entity (not reporting). ZER = Records entity with 0 QFCs (not reporting). DEM = Records entity de minimis exemption (not reporting). OTH = Records entity using another exemption (not reporting).	Char(3)	Should be ''REN'' or ''NFC'' or ''EXC'' or ''DEM'' or ''ZER'' or ''OTH.''

[1] Foreign branches and divisions shall be separately identified to the extent they are identified in an entity's reports to its PFRAs.

COUNTERPARTY MASTER TABLE

	Field	Example	Instructions and data application	Definition	Validation
CP.1	As of date	2015–01–05	Data extraction date	YYYY–MM–DD.	

COUNTERPARTY MASTER TABLE—Continued

	Field	Example	Instructions and data application	Definition	Validation
CP.2	Counterparty identifier	888888888	Use LEI if counterparty has one. Should be used consistently across all records entities within a corporate group. The counterparty identifier shall be the global legal entity identifier if one has been issued to the entity. If a counterparty transacts with the records entity through one or more separate foreign branches or divisions and any such branch or division does not have its own unique global legal entity identifier, the records entity must include additional identifiers, as appropriate to enable the FDIC to aggregate or disaggregate the data for each counterparty and for each entity with the same ultimate parent entity as the counterparty.	Varchar(50).	
CP.3	Has LEI been used for counterparty identifier?	Y/N	Indicate whether the counterparty identifier is an LEI.	Char(1)	Should be ''Y'' or ''N.''
CP.4	Legal name of counterparty	John Doe & Co	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(200).	
CP.5	Domicile	New York, New York	Enter as city, state or city, foreign country.	Varchar(50).	
CP.6	Jurisdiction under which incorporated or organized.	New York	Enter as state or foreign jurisdiction.	Varchar(50).	
CP.7	Immediate parent entity identifier.	77777777	Provide an identifier for the parent entity that directly controls the counterparty. Use LEI if immediate parent entity has one.	Varchar(50).	
CP.8	Has LEI been used for immediate parent entity identifier?	Y/N	Indicate whether the immediate parent entity identifier is an LEI.	Char(1)	Should be ''Y'' or ''N.''
CP.9	Legal name of immediate parent entity.	John Doe & Co	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(200).	
CP.10	Ultimate parent entity identifier	666666666	Provide an identifier for the parent entity that is a member of the corporate group of the counterparty that is not controlled by another entity. Information needed to identify counterparty. Use LEI if ultimate parent entity has one.	Varchar(50)	
CP.11	Has LEI been used for ultimate parent entity identifier?	Y/N	Indicate whether the ultimate parent entity identifier is an LEI.	Char(1)	Should be ''Y'' or ''N.''
CP.12	Legal name of ultimate parent entity.	John Doe & Co	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(100).	

BOOKING LOCATION MASTER TABLE

	Field	Example	Instructions and data application	Definition	Validation
BL.1	As of date	2015–01–05	Data extraction date	YYYY–MM–DD.	
BL.2	Records entity identifier	999999999	Provide LEI	Varchar(50)	Should be a valid entry in the Corporate Org Master Table.
BL.3	Internal booking location identifier.	New York, New York	Provide office where the position is booked. Information needed to determine the headquarters or branch where the position is booked, including the system on which the trade is booked, as well as the system on which the trade is settled.	Varchar(50).	

BOOKING LOCATION MASTER TABLE—Continued

	Field	Example	Instructions and data application	Definition	Validation
BL.4	Unique booking unit or desk identifier.	xxxxxx	Provide unit or desk at which the position is booked. Information needed to help determine purpose of position.	Varchar(50).	
BL.5	Unique booking unit or desk description.	North American trading desk	Additional information to help determine purpose of position.	Varchar(50).	
BL.6	Booking unit or desk contact—phone.	1–999–999–9999	Information needed to communicate with the booking unit or desk.	Varchar(50).	
BL.7	Booking unit or desk contact—email.	*Desk@Desk.com*	Information needed to communicate with the booking unit or desk.	Varchar(100).	

SAFEKEEPING AGENT MASTER TABLE

	Field	Example	Instructions and data application	Definition	Validation
SA.1	As of date	2015–01–05	Data extraction date	YYYY–MM–DD	
SA.2	Safekeeping agent identifier	888888888	Provide an identifier for the safekeeping agent. Use LEI if safekeeping agent has one.	Varchar(50).	
SA.3	Legal name of safekeeping agent.	John Doe & Co	Information needed to identify and, if necessary, communicate with the safekeeping agent.	Varchar(200).	
SA.4	Point of contact—name	John Doe	Information needed to identify and, if necessary, communicate with the safekeeping agent.	Varchar(200).	
SA.5	Point of contact—address	123 Main St, City, State Zip Code.	Information needed to identify and, if necessary, communicate with the safekeeping agent.	Varchar(100).	
SA.6	Point of contact—phone	1–999–999–9999	Information needed to identify and, if necessary, communicate with the safekeeping agent.	Varchar(50).	
SA.7	Point of contact—email	*Jdoe@JohnDoe.com*	Information needed to identify and, if necessary, communicate with the safekeeping agent.	Varchar(100).	

DETAILS OF FORMATS

Format	Content in brief	Additional explanation	Examples
YYYY–MM–DD	Date	YYYY = four digit date, MM = 2 digit month, DD = 2 digit date.	2015–11–12
Num (25,5)	Up to 25 numerical characters including 5 decimals.	Up to 20 numerical characters before the decimal point and up to 5 numerical characters after the decimal point. The dot character is used to separate decimals.	1352.67 12345678901234567890.12345 0 −20000.25 −0.257
Char(3)	3 alphanumeric characters	The length is fixed at 3 alphanumeric characters.	USD X1X 999
Varchar(25)	Up to 25 alphanumeric characters	The length is not fixed but limited at up to 25 alphanumeric characters.	asgaGEH3268EFdsagtTRCF543

Dated: October 13, 2016.

Amias Moore Gerety,

Acting Assistant Secretary for Financial Institutions.

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